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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-938

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,

Respondent,

vs.

ALLSTATE INSURANCE COMPANY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

The petitioner, Allstate Insurance Company, prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of the State of Minnesota entered in these proceedings on September 19, 1979.

OPINION BELOW

The order and memorandum of the trial court appears at Appendix C; the opinion of the Minnesota Supreme Court on appeal appears at Appendix B and the opinion of the Minnesota Supreme Court on rehearing appears at Appendix A. Neither opinion of the Minnesota Supreme Court has yet been officially reported.

JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was entered on September 19, 1979. A copy of this judgment appears at Appendix D. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Cases Sustaining Jurisdiction.

Cases believed to sustain jurisdiction include: *Savchuk v. Rush,* No. 78-952 (Argued October 3, 1979); *World-Wide Volkswagen Corporation v. Woodson,* No. 78-1078 (Argued October 3, 1979); *Clay v. Sun Ins. Office, Ltd.,* 377 U.S. 179 (1964); *Hartford Accident and Indemnity Company v. Delta Pine & Land Co.,* 292 U.S. 143 (1934); *Home Ins. Co. v. Dick,* 281 U.S. 397 (1930).

QUESTION PRESENTED

Should the constitutional mandates of the due process section of the Fourteenth Amendment of the U. S. Constitution and the Full Faith and Credit Clause of the U. S. Constitution, as enunciated by this Court in *Home Insurance Company v. Dick,* 281 U.S. 397, 50 S.Ct. 338 (1930), *Hartford Accident and Indemnity Company v. Delta Pine and Land Company,* 292 U.S. 143, 54 S.Ct. 634 (1934), and *John Hancock Mutual Life Insurance Company v. Yates,* 299 U.S. 178, 57 S.Ct. 129 (1936), be frustrated by the Minnesota Supreme Court's choosing their law to interpret a contract drawn in Wisconsin as it relates to an accident which took place in Wisconsin between Wisconsin residents?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution and the Full Faith and Credit Clause of the United States Constitution.

Section 1 of the Fourteenth Amendment to the United States Constitution, in pertinent part, provides:

> No State shall . . . deprive any person of life, liberty or property, without due process of law. . . .

Article 4 §1 of the United States Constitution, in pertinent part, provides:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. . . .

STATUTE INVOLVED

The Minnesota Statute involved, in pertinent part, provides:

> §65B.14, Subd. 1—'Policy of automobile liability insurance' means a policy delivered or issued for delivery in this state. . .

STATEMENT OF THE CASE

The following is a stipulated-to statement of the facts which was presented to the Minnesota Supreme Court:

> The cause of action upon which this case is based arises out of an automobile and motorcycle accident which occurred on July 1, 1974 in Pierce County, Wisconsin, which is immediately adjacent to the border near Red Wing, Minnesota. Ralph A. Hague was a passenger on a motorcycle owned and operated by his son, Ronald Hague.
>
> The Hagues were traveling west on Highway 35, and they intended to turn left (to the south) onto a road that led to Elderwood Heights, Wisconsin. They slowed to an eventual stop and signaled their intention to make a left turn. While waiting for an eastbound car to pass in the oncoming or opposite lane, the motorcycle was struck from behind by an automobile owned and operated by Mr. Richard R. Borst, a resident of Ellsworth, Wisconsin. Mr. Ralph A. Hague died as a result of injuries sustained in this accident.
>
> At the time of the accident, Ralph A. Hague resided with his wife, Lavinia Hague, in Hager City, Wisconsin, which is located just one and one-half (1-1/2) miles from

Red Wing, Minnesota. Although Ralph A. Hague resided in Wisconsin, he was employed in Red Wing, Minnesota, and he had been employed in Red Wing for fifteen (15) years immediately preceding his death. After the accident, and prior to the initiation of the above entitled matter, Lavinia Hague moved her residence to Red Wing, Minnesota. On June 19, 1976, almost concurrently with the initiation of this action, Lavinia Hague was married to a Minnesota resident who operated an automobile service station in Bloomington, and established residence with her husband in Savage, Minnesota. The motorcycle which Ralph A. Hague was riding was owned by his son, Ronnie Hague, for about one year prior to the accident.

Ronnie Hague owned other vehicles that were insured by Allstate, but his motorcycle was not insured. Mr. Richard R. Borst was without valid insurance coverage at the time of the accident.

Ralph A. Hague was insured, at the time of the accident, by Allstate, which had issued one policy to the decedent (Policy No. 011 985 43), which policy extended coverage to three automobiles that Ralph A. Hague owned. A separate premium was paid for each such automobile. The policy was effective as of June 8, 1974, and it provided for uninsured motorist coverage to the limits of $15,000.00 for each such automobile.

On the 28th day of May, 1976, the Registrar of Probate for the County of Goodhue, State of Minnesota, appointed Lavinia Hague personal representative of the estate of her deceased husband, Ralph A. Hague. Subsequent to her appointment as personal representative,

> Lavinia Hague initiated the above entitled action against Allstate.
>
> The plaintiff in this action, Lavinia Hague, widow of the deceased, Ralph A. Hague, is suing for declaratory relief construing the above indicated policy so as to "stack" the separate $15,000.00 uninsured motorist coverages on each automobile and therefore afford coverage in the total amount of $45,000.00. Questions of liability and amount of damages are not at issue in this proceeding, only the amount of coverage available. Plaintiff and defendant agree that if Minnesota law governs this case, "stacking" of the uninsured motorist benefits in the insurance policy is applicable.

The record does not reflect anything more about why probate was begun in the State of Minnesota and whether there was one in the State of Wisconsin. At the trial court level, cross motions for summary judgment were brought. The respondent Hague's motion was granted and the petitioner Allstate's motion was denied. Appeal then followed to Minnesota's Supreme Court which, after affirming the trial court, granted a petition for rehearing and then again affirmed the trial court.

REASONS FOR GRANTING THE WRIT

I. THE MINNESOTA SUPREME COURT HAS DECIDED AN IMPORTANT ISSUE OF CHOICE OF LAW IN A MANNER CONTRARY TO CONSTITUTIONAL MANDATES AND TO PRIOR DECISIONS OF THIS COURT.

There is no question but that jurisdiction was available to Minnesota to hear this case. At the time the personal representative brought her action she was a resident of the State of Minnesota, although not a resident of the State of Minnesota at the time of the accident giving rise to the instant action, and there is no question but that Allstate is an insurance company which does business in all fifty states and although principally headquartered in the State of Illinois nevertheless is actively engaged in business in Minnesota. The issue therefore is not jurisdiction, but rather whether Minnesota had the right under the Constitution to choose its law in the circumstances of this declaratory action over that of Wisconsin.

The precise question of law is whether the representative of the estate of Mr. Hague (in actuality the action should have been brought by the trustee of the next of kin under Minnesota state law but the question was ancillary to the court's main decision and they never directly addressed it) should be allowed to "stack" the three $15,000.00 uninsured motorist coverages on Mr. Hague's separate vehicles or whether they are confined to the proceeds of one coverage. It is conceded by the Minnesota court that decisions of Wisconsin courts construing Wisconsin's uninsured motorist insurance statutes would not allow "stacking", while Minnesota decisions would allow the policies to be "stacked". (A-21) There is no dispute by the petitioner that "stacking" would be al-

lowed by Minnesota law. Rather, the issue is whether Wisconsin law, and not Minnesota law, should have been the choice of the Minnesota court.

In the instant case the Minnesota court was asked to interpet a policy of insurance issued in Wisconsin to a Wisconsin resident who was thereafter injured on Wisconsin roads while riding as a passenger with another Wisconsin resident who collides with a third Wisconsin resident. Additionally, the representative bringing this action is the decedent's wife, who was a Wisconsin resident at the time of the accident giving rise to the action and who only brought this action after moving to Minnesota and becoming a Minnesota resident.

This court has indicated in a line of cases that when the state which is the forum state of an issue has contacts which are only "slight and casual" with the dispute which it is hearing, then the forum state should refuse to determine the issue by the choice of its own law. In the instant case, Minnesota's contacts were far more "slight" and "casual" than those of other states which this court has previously reversed in their choice of their own forum's law.

The decision of the Supreme Court of the State of Minnesota is contrary to the following line of U. S. Supreme Court cases, interpreting parties' rights under the full faith and credit clause and the due process clause:

1. *Home Insurance Company v. Dick*, 281 U.S. 397, 50 S.Ct. 338 (1930). The case involved interpretation of an insurance policy which had been issued to a Mexican in Mexico covering a Mexican risk. The policy was subsequently transferred to Mr. Dick, who was a domicilliary of Mexico, but a permanent resident of Texas. The loss occurred in Mexican waters. The Supreme Court held that application of Texas law over Mexican law was a violation of due process under

such circumstance. In so doing they indicated that the residency of Mr. Dick in Texas was of no relevance to the choice law, just as Mrs. Hague's subsequent residency in Minnesota should have nothing to do with Minnesota's choice of law.

2. *Hartford Accident and Indemnity Company v. Delta Pine and Land Company*, 292 U.S. 143, 54 S.Ct. 634 (1934). A fidelity bond was written in Tennessee by Hartford Insurance Company to cover fraud and dishonest acts of the employees of Delta Pine and Land Company. Delta Pine and Land Company and the defaulting employee subsequently moved to Mississippi and the loss on the bond took place in Mississippi. Hartford Insurance Company did business both in the State of Mississippi and the State of Tennessee. Delta Pine's subsequent claim under the bond was not made within the time limitation on actions under the surety contract. The law of the State of Mississippi voided such contract limitations while the law of the State of Tennessee did not void such contract limitations. The action was brought in Mississippi and the Mississippi court indicated that under these facts it would apply its own law and void the contract limitations, thereby ordering Hartford to pay Delta Pine. The U. S. Supreme Court said that the courts of Mississippi could not impose the law of Mississippi and to do so was a violation of due process when Mississippi had such "slight and casual' contact with the transaction, and Tennessee was the state where the contract was negotiated and made.

3. *John Hancock Mutual Life Insurance Company v. Yates*, 299 U.S. 178 (1936). In this case, an action on a life insurance policy was brought. In May of 1932, the John Hancock Mutual Life Insurance Company, a Massachusetts corporation, insured the life of Harmon F. Yates, agreeing to pay upon his death $2,000.00 to his wife. The policy was applied

for, issued and delivered in New York where Mr. Yates and his wife resided, and where they remained until his death of cancer in the following month. Subsequently his widow moved to Georgia and brought in a court of that state a suit on the policy.

John Hancock denied payment on the policy because it contended that answers in the application as to whether the applicant was then in good health and whether he had ever been treated for cancer and other questions had been answered falsely and that these were material misrepresentations which under the law of New York voided the policy. Georgia law indicated that whether the answers given by the insured in the application are material misrepresentations was a matter for the jury and applied its own law over that of New York's and let the matter go to the jury, where the jury awarded the policy benefits.

This court granted certiorari and reversed the Georgia court, indicating that the Georgia court failed to give full faith and credit to the New York statute under such circumstances. This court stated, as the petitioner feels in this case, that:

> Petitioner's right to the protection claimed under the Constitution was denied by the Supreme Court of Georgia. The rights of the petitioner can now be protected only by this court.

Some decisions of this court have allowed application of a forum state's law over that of a contracting state. (*Clay v. Sun Insurance Office Ltd.*, 363 U.S. 207, 80 S.Ct. 1222 (1960); 377 U.S. 179, 84 S.Ct. 1197 (1964), *Watson v. Employer's Liability Insurance Corporation*, 348 U.S. 66, 75 S.Ct. 166 (1954), and certain workers' compensation cases, such as

Pacific Employer's Insurance Company v. Industrial Accident Commission, 306 U.S. 493, 59 S.Ct. 629 (1939). In each of those cases, however, where the court has accepted the forum state's choice of its own law, a significant contact relating to the incident giving rise to the claim, occurred within the forum state. In *Watson* the plaintiff was injured in Louisiana, the forum state, and the forum state allowed direct action suits against the insurer. In *Clay,* the loss occurred in the forum state of Florida and the decedent had been making insurance payments from the State of Florida prior to the loss. In *Pacific Employer's,* California was the forum state and the employee was injured in California.

As indicated before, the only contact with the State of Minnesota in this case is that, after the accident giving rise to the declaratory judgment, the widow moved to Minnesota and began the action. In *Home Insurance Company* (supra), the court indicated that Mr. Dick's residency in the State of Texas, even at times pertinent to the loss, was not a pertinent contact in the consideration of choice of law:

> The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to effect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon, and to seize property in payment of the imposed obligation, violates the guaranty against deprivation of property without due process of law. 281 U.S. 408, 50 S.Ct. 341, 74 L.Ed. 933

If you dismiss the relevancy of the residency of the plaintiff, established after the accident in question, there is virtually no contact with the State of Minnesota. Moreover, in

Delta Pine and Land Company (supra), the event giving rise to the litigation occurred in the forum state and that was not enough contact with the forum state for it to apply its own law. In the instant case we have no incident or contact within the State of Minnesota.

If the Minnesota Supreme Court's decision is to be upheld, then any plaintiff, especially in representative actions such as this, could choose a representative of that state whose laws are most favorable to their version of the case and could expect that the forum state would choose their own law, even if the forum state had had no prior contacts with the matter prior to their citizen-representative bringing the action. The Minnesota Court forthrightly indicated in footnote #6 to their original decision (A-19) that several other state courts have chosen the state of contracting to be dispositive as to choice of law. In footnote #7 (A-20) they concede that the one state court which ruled otherwise had more contacts with the contract than they did in the instant case. After acknowledging this though, they give no reason why they chose to continue to accept Minnesota law in their original opinion and on rehearing. The majority in both decisions entirely avoided the constitutional ramifications of the decision.

Only the strong dissent of Justice Otis (A-2), joined by Justice Peterson, addresses itself to the constitutional issues. Your petitioner agrees entirely with the dissent of Justice Otis and incorporates his dissent by reference in this petition. The clear and precise argument of Justice Otis fell on deaf ears; we pray that this petition will not.

II. THIS CASE IS DISTINGUISHED FROM THAT OF *SAVCHUK v. RUSH*. THE COURT SHOULD NOT DENY CERTIORARI TO THIS CASE THINKING THAT ITS OPINION IN *SAVCHUK v. RUSH* WILL MAKE THE ISSUE MOOT.

The petitioner is aware this court has granted certiorari a second time to the case of *Savchuk v. Rush*, 311 Minn. 480, 245 N.W.2d 624, 630 (1976). At first blush the cases may seem to have a similarity, but they are actually concerned with different issues. The similarity lies in that both cases are brought primarily by insurers questioning the assertion of the Minnesota Court's authority over out of state events.

Savchuk however deals with the constitutionality of a Minnesota statute granting jurisdiction under certain circumstances. In the instant case, the petitioner challenges the constitutionality of the Minnesota Court's choice of its law in the limited situation presented by the facts of the instant case.

The distinction between the two cases is probably eminently clear to this Court, but given the proximity in time to the granting of certiorari to *Savchuk*, the distinction is pointed out lest the court feel their decision in *Savchuk* will render this case moot.

III. THERE ARE PRESENTLY THREE CASES FROM THE STATE OF MINNESOTA PETITIONING FOR A WRIT OF CERTIORARI BEFORE THIS COURT ON THE SAME ISSUE.

The Minnesota Supreme Court has recently been confronted with a trilogy of cases dealing with choice of law. The instant case, *George D. Hime v. State Farm Fire & Casualty Company*, Minn. S. Ct. No. 48078, U. S. S.Ct. ————, and *Lisa Blamey, a minor, by her mother and natural guardian, Shirley Blamey v. Thorwald Brown a/k/a Ted Brown, Ted Brown's Bar and Overshoe Club*, Minn. S. Ct. No. 47917, U.S. S.Ct. 78-1100 have now all petitioned this court for a writ of certiorari. All three cases merit close consideration by this Court, and the fact that the three cases all deal with the same issue gives this court a good opportunity to grant certiorari to all three in order to efficiently update its position on choice of law between competing forums.

SUMMARY

In conclusion then, the imposition of Minnesota's public policy in interpreting insurance policies applied for, issued and delivered in another state in light of an incident occurring in another state, between residents of another state, seems to be an assertion by the Minnesota Supreme Court that they will hold insurers all over the United States to their blanket public policy, even in disputes involving non-residents traveling outside of the State of Minnesota and carrying insurance issued and paid for outside the State of Minnesota. Such an assertion completely erases the rule of comity and violates this Court's interpretation of the full faith and credit and due process provisions of our Constitution. For these reasons, your petitioner prays that this petition be granted.

Respectfully submitted,

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APPENDIX A

No. 44 (1978)

Hennepin County

LAVINIA HAGUE, Personal Representative of the ESTATE OF RALPH ALVIN HAGUE, Deceased,

Respondent,

vs.

ALLSTATE INSURANCE COMPANY,

Appellant.

Yetka, J.
Dissenting, Otis, J. and Peterson, J.
Endorsed
Filed August 31, 1979
John McCarthy, Clerk
Minnesota Supreme Court

Heard before Rogosheske, Todd, and Yetka, JJ., and reheard and decided by the court en banc.

OPINION

YETKA, Justice.

Appellant moved this court for a rehearing after the case was originally heard and decided. The petition having been granted, the case was reheard en banc on December 12, 1978. Upon reconsideration by the court, we are of the opinion that since there was no manifest error of fact, the case was fully argued, and no new issues of fact or of law have been presented, there has been no adequate reason presented to the court which justifies a reversal.

By way of further explanation for its earlier decision, the court is of the opinion that the questions of jurisdiction and conflict of laws must be separated. We are of the opinion that there is no real question of jurisdiction of the Minnesota court. Where plaintiff is a resident of the state and decedent's estate is probated in Minnesota, defendant does business in this state and was properly served with process, the Minnesota court has jurisdiction of the case.

The only remaining question is whether Wisconsin or Minnesota law should be applied on the question of "stacking" insurance coverage. For all of the reasons stated in our original opinion and for the additional reason that contracts of insurance on motor vehicles are in a class by themselves and must be so treated, we believe Minnesota law was properly applied. When an insurance company doing business in a number of states writes a policy on an automobile, the company knows the automobile is a movable item which will be driven from state to state. The company, therefore, accepts the risk that the insured may be subject to liability not only in the state where the policy is written, but also in states other than where the policy is written, and that in many instances those states will apply their own law to the situation. See Clay v. Sun Insurance Office, Ltd., 377 U. S. 179, 84 S. Ct. 1197, 12 L. ed. 2d 229 (1964). Such a contract is not like the usual commercial transaction where the law of the state where the contract is made should and does play a more important role. Application of Minnesota law in this case is, therefore, not so arbitrary and unreasonable as to violate due process.

OTIS, Justice (dissenting).

I agree with the majority that this case presents no serious question of jurisdiction. The only issue is one of choice-of-law. Although I share the view that the Minnesota rule permitting

stacking is better law than the Wisconsin rule which denies it, I cannot accept the position that the application of Minnesota law does not deprive the defendant of a constitutional right to the protection of its "justified expectations." Neither the original opinion nor the supplemental opinion which followed reargument, deals with the constitutional problems inherent in depriving the defendant of the right to invoke the more favorable Wisconsin rule.

Mr. Justice Black and Mr. Justice Brennan have commented on the similarity between the constitutional questions presented in cases dealing with choice of law and those governing jurisdictional problems. In Hanson v. Denckla, 357 U. S. 235, 258, 78 S. Ct. 1228, 1242, 2 L. ed. 2d 1283, 1300 (1958), Mr. Justice Black, dissenting, noted:

> "* * * True, the question whether the law of a State can be applied to a transaction is different from the question whether the courts of that State have jurisdiction to enter a judgment, but the two are often closely related and to a substantial degree depend upon similar considerations."

More recently, in Shaffer v. Heitner, 433 U. S. 186, 224, 97 S. Ct. 2569, 2591, 53 L. ed. 2d 683, 710 (1977) Mr. Justice Brennan, concurring in part and dissenting in part, stated:

> "* * * I recognize that the jurisdictional and choice-of-law inquires are not identical. * * * In either case an important linchpin is the extent of contacts between the controversy, the parties, and the forum State. While constitutional limitations on the choice of law are by no means settled, * * * important considerations certainly include the expectancies of the parties and the fairness of governing the defendants' acts and behavior by rules of conduct created by a given jurisdiction,"

citing Restatement, Conflict of Laws 2d, § 6. The Restatement, § 6, Comment g, defines the problem as follows:

> "*g. Protection of justified expectations.*
>
> This is an important value in all fields of the law, including choice of law. Generally speaking, it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state. Also, it is in part because of this factor that the parties are free within broad limits to choose the law to govern the validity of their contract * * * and that the courts seek to apply a law that will sustain the validity of a trust of movables * * *."

The accident which gave rise to this litigation occurred on July 1, 1974, in Pierce County, Wisconsin, when a motorcycle owned and operated by Ronald Hague, on which his father, Ralph Hague, was a passenger, collided with an automobile owned and operated by Richard Borst. Ralph Hague died as a result of that collision. The Hagues, father and son, and Borst, were all residents of Wisconsin at the time of the accident. Both vehicles were licensed and garaged in the State of Wisconsin.

Neither vehicle was covered by insurance. However, the decedent had a single policy of insurance written by the defendant which extended coverage to three automobiles owned by decedent in Wisconsin on which three separate premiums were paid. That policy provided for uninsured motorist coverage up to $15,000 for each of the three automobiles owned by decedent. The insurance contract was entered by the defendant and the decedent in the State of Wisconsin, the premiums were paid in the State of Wisconsin, and the policy was retained in the State of Wisconsin.

The decedent's only connection with Minnesota was his employment in this state, but at no time prior to his death did either he or his family live in this state. His widow subsequently moved to Minnesota following her remarriage. She was appointed representative of his estate in Minnesota, and brought this action against defendant which does business in Minnesota.

In our decision in Van Tassel v. Horace Mann Mutual Ins. Co. 296 Minn. 181, 207 N. W. 2d 348 (1973) our court unanimously held that an insured who pays premiums on more than one policy is entitled to stack the benefits covered by each policy under its uninsured motorist coverage. On the other hand, under the law of Wisconsin as enunciated by its Supreme Court in Nelson v. Employers Mutual Cas. Co., 63 Wis. 2d 558, 217 N. W. 2d 670 (1974) stacking of the kind sought in this case is denied.

At the outset it should be noted that no case has been called to our attention, and we are aware of none, which applies the better choice-of-law principle to a case such as this, where at the time of the occurrence there were no contacts whatever with the forum state other than a place of employment which played no part in the events giving rise to the litigation. The majority relies strongly on our decision in Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973). In that case we applied Minnesota law rather than the law of Ontario where the parties all resided. However, in so doing we cited as dispositive on the question of Minnesota's interest the fact that the accident occurred in Minnesota as well as the fact that plaintiff was hospitalized for well over a month in this state. We said:

> "The compelling factors in this case are the advancement of the forum's governmental interests and the ap-

> plication of the better law. * * * We might also note that persons injured in automobile accidents occurring within our borders can reasonably be expected to require treatment in our medical facilities, both public and private. In the instant case, plaintiff incurred medical bills in a Duluth hospital which have already been paid, but we are loath to place weight on the individual case for fear it might offer even minor incentives to 'hospital shop' or to create litigation-directed pressures on the payment of debts to medical facilities. Suffice it to say that we recognize that medical costs are likely to be incurred with a consequent governmental interest that injured persons not be denied recovery on the basis of doctrines foreign to Minnesota." 295 Minn. 170, 203 N. W. 2d 417.

Significantly neither of these factors is present in the case before us. The accident did not happen in Minnesota, and whatever economic loss resulted to the decedent's survivors occurred only in the State of Wisconsin.

More nearly in point is our decision in Bolgrean v. Stich, 293 Minn. 8, 196 N. W. 2d 442 (1972). The factors we there specified as determining the applicable law compel a finding in this case that the "center of gravity" is in Wisconsin. In Bolgrean, Minnesota law was applied where the plaintiff was a resident of North Dakota and the accident occurred in South Dakota. The considerations which governed our application of Minnesota law located the "center of gravity" and were described by us as being (1) the state where the driver and the owner of the vehicle causing the injuries was a resident, here Wisconsin; (2) the state where that vehicle was garaged, licensed, and insured, here Wisconsin; (3) the state where the injured party lived most of her life and was a resident at the time of the accident, here Wisconsin; and, (4) the state where

the trip which resulted in the injury was initiated, here Wisconsin. See, 293 Minn. 10, 196 N. W. 2d 444. We further noted in Bolgrean that "the only party concerned with predictability is the insuror of the host's vehicle," *Id.*, here the defendant. That insuror, we said, must be assumed to have charged rates applicable to the state of the owner's residence, again the State of Wisconsin.

Every factor which governed our decision in Bolgrean applies to the facts of the instant case, plus two additional elements not present in Bolgrean, namely the fact the decedent was not a resident of the forum state and the accident did not occur in the forum state.

It seems to me wholly inconsistent for us now to ignore all of the criteria we set forth in Bolgrean. The only question in Bolgrean and Milkovich was whether Minnesota had sufficient interest in the litigation to apply this state's better rule of law. Bolgrean makes clear the conditions under which we will apply the Minnesota law in derogation of the law of a different state and I submit none of those conditions has been met in the instant case.

Only passing reference is made by the majority to the decisions of the U. S. Supreme Court which deal with the constitutional problems involved in applying the better rule of law. Lest there be any doubt about the viability of Home Ins. Co. v. Dick, 281 U. S. 397, 50 S. Ct. 338, 74 L. ed. 296 (1930) and Hartford Accident and Indem. Co. v. Delta & Pine Land Co. 292 U. S. 143, 54 S. Ct. 634, 78 L. ed. 1178 (1934) both of those cases were referred to and distinguished in Clay v. Sun Insurance Office, Ltd., 377 U. S. 179, 84 S. Ct. 1197, 12 L. ed. 2d 229 (1964).

In Dick, the Supreme Court held that an insuror was denied due process where a Texas statute of limitations permitted

a fire insurance claim to be made against the insuror in a Texas court, at a time when the claim was barred by a statute of limitations in Mexico where the loss occurred.

In the Hartford case, a Connecticut insuror contracted with a Mississippi corporation in Tennessee for a fidelity bond which required claims to be made within 15 months after termination of the suretyship. A Mississippi court struck down that condition and was reversed by the U. S. Supreme Court, which held:

> "The Mississippi statutes, so construed, deprive the appellant of due process of law. A state may limit or prohibit the making of certain contracts within its own territory * * *; but it cannot extend the effect of its laws beyond its borders so as to destroy or impair the right of citizens of other states to make a contract not operative within its jurisdiction, and lawful where made. * * * Nor may it in an action based upon such a contract enlarge the obligations of the parties to accord with every local statutory policy *solely upon the ground that one of the parties is its own citizen.*
>
> "* * * [A state] may not, on grounds of policy, ignore a right which has lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. * * * A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the Fourteenth Amend-

ment." 292 U. S. 149, 54 S. Ct. 636, 78 L. ed. 1181. (Citations omitted, italics supplied.)

The residence element on which the majority in this case strongly relies was brushed aside in the Dick case where the Supreme Court said:

> "* * * The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon, and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." 281 U. S. 408, 50 S. Ct. 341, 74 L. ed. 933.

In the instant case the plaintiff was at all times here material physically present in Wisconsin. In denying recovery in the Dick case the court held that Texas "may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them." 281 U. S. 410, 50 S. Ct. 342, 74 L. ed 935.

What is to me the key issue, the after-the-fact residence of plaintiff in Minnesota, was unequivocally treated as "without significance" in the Dick case. That conclusion was reaffirmed in the Clay case where a unanimous court stated that the Hartford and Dick decisions "were cases where the activities in the state of the forum were thought to be too slight and too casual as in the * * * [Hartford case], to make the application of local law consistent with due process, *or wholly lacking*, as in the Dick case." 377 U. S. 181, 84 S. Ct. 1198, 12 L. ed. 2d at 231-32. (Italics supplied.) A footnote quotes, among other things, the sentence set forth above that "the fact that Dick's permanent residence was in Texas is without significance."

377 U. S. 182 n. 5, 84 S. Ct. 1199, 12 L. ed. 2d 232. In the light of the Supreme Court's recent approval of that rule, giving no effect whatever to after-the-fact residence, I submit that the underpinnings of the majority rule have no constitutional support. In justifying the application of Minnesota law to a Wisconsin accident involving Wisconsin residents, the original majority opinion recites, among other things:

> "Minnesota contacts with the facts of the case begin with plaintiff's residence at the time of suit * * *. Thus, as the 'justice administering state' Minnesota has at least one significant contact.
>
> * * * * *
>
> "The Minnesota interest in full compensation for her residents injured by uninsured motorists is sufficient to allow the application of Minnesota law if otherwise warranted." Hague v. Allstate Insurance Co. —— N. W. 2d ——, ——, —— (Minn. 1978).

If, as the United States Supreme Court has consistently held, residence of a party is not to be considered in choice-of-law cases, clearly there is nothing left on which to base the application of Wisconsin law in this case.[1]

The rights of this defendant, which are in my opinion constitutionally protected, were vested at the time it entered

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[1] Both the dissent and footnote 2 of the original majority opinion refer to Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 624 (1976). That case also dealt with after-the-fact residency for purposes of acquiring jurisdiction. On appeal to the U. S. Supreme Court the judgment of our court was vacated and the case remanded (433 U. S. 902, 97 S. Ct. 2964, 53 L. ed. 2d (1086 [1977]) for further consideration in light of Shaffer v. Heitner, 433 U. S. 186, 97 S. Ct. 2569, 53 L. ed. 2d 683 (1977). On remand, the majority of this court adhered to its prior decision, 272 N. W. 2d 888 (Minn. 1978). On February 21, 1979, the U. S. Supreme Court noted probable jurisdiction, 99 S. Ct. 1211 (1979), but has not yet rendered its decision.

its contract for insurance with the decedent in Wisconsin prior to July 1, 1974. At that time stacking had been held unavailable by the Wisconsin court in its Nelson decision filed May 20, 1974. Defendant had a right to rely on that decision in fixing its rates and in actuarially assessing its exposure. Where the contract was entered into in Wisconsin by Wisconsin residents, who were exposed primarily to Wisconsin hazards, and the loss which could be anticipated did in fact occur in Wisconsin and was wholly unrelated to the hazards of any other state, defendant had a right to rely on the application of Wisconsin law. The Restatement, Conflict of Laws 2d, § 188, Comment b, states the case well:

> "* * * Parties entering a contract will expect at the very least, subject perhaps to rare exceptions, that the provisions of the contract will be binding upon them. Their expectations should not be disappointed by application of the local law rule of a state which would strike down the contract or a provision thereof unless the value of protecting the expectations of the parties is substantially outweighed in the particular case by the interest of the state with the invalidating rule in having this rule applied. The extent of the interest of a state in having its rule applied should be determined in the light of the purpose sought to be achieved by the rule *and by the relation of the transaction and the parties to that state* * * *." (Italics supplied.)

Granted that the Minnesota rule of law is better, in the absence of any substantial interest by this state in the subject of the litigation, our intrusion into the rights of those who have transacted business in good faith elsewhere verges on

meddling in the judicial policy of a sister state if we deny the legitimate expectations of a contracting party by applying Minnesota law on the fragile grounds here asserted.

Accordingly, I would reverse.

PETERSON, Justice (dissenting) .

I join in the dissent of Mr. Justice Otis.

APPENDIX B

(Caption)

SYLLABUS

1. Where both parties were properly residents of the state of Minnesota at the time suit was brought, Minnesota is a proper state in which to try the action where there is no inconvenience to witnesses, where plaintiff-decedent had worked 15 years in the state of Minnesota and driven across the Minnesota-Wisconsin border to his employment in Minnesota, were a probate representative of the decedent was appointed in Minnesota, and where the decedent's representatives were not parties to the contract of insurance between the decedent and the insurance company.

2. Minnesota law was properly applicable to the case on the test set forth in Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973).

Affirmed.

Heard before Rogosheske, Todd, and Yetka, JJ., and considered and decided by the court en banc.

OPINION

YETKA, Justice.

Appeal by defendant, Allstate Insurance Co., from an order of the Hennepin County District Court granting plaintiff

Lavinia Hague's motion for summary judgment and denying defendant's motion to dismiss.[1] We affirm.

The facts are not in dispute. The cause of action upon which this case is based arises out of an automobile and motorcycle accident which occurred on July 1, 1974, in Pierce County, Wisconsin, which is immediately adjacent to the border near Red Wing, Minnesota. Ralph A. Hague was a passenger on a motorcycle owned and operated by his son, Ronald Hague.

The Hagues were traveling west on Highway No. 35, and they intended to turn left (to the south) onto a road that led to Elderwood Heights, Wisconsin. They slowed to an eventual stop and signaled their intention to make a left turn. While waiting for an eastbound car to pass in the oncoming or opposite lane, the motorcycle was struck from behind by an automobile owned and operated by Mr. Richard R. Borst, a resident of Ellsworth, Wisconsin. Mr. Ralph A. Hague died as a result of injuries sustained in this accident.

At the time of the accident, Ralph A. Hague resided with his wife, Lavinia Hague, in Hager City, Wisconsin, which is located just 1 1/2 miles from Red Wing, Minnesota. Although Ralph A. Hague resided in Wisconsin, he was employed in Red Wing, Minnesota, and he had been employed in Red Wing for 15 years immediately preceding his death. After the accident, and prior to the initiation of the above entitled matter, Lavinia Hague moved her residence to Red Wing, Minnesota. On June

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[1] An order granting summary judgment is not appealable. Rule 103.03, Rules of Civil Appellate Procedure; Johnson and Peterson, Inc. v. Tookey, 288 Minn. 362, 184 N. W. 2d 586 (1971). The trial court did not certify the question as important and doubtful. No judgment appears in the record and thus if the case were dismissed judgment would be entered and appeal time would then run. Because that course would simply delay the proceedings, the court exercises its discretionary review under Rule 102 and 105.01. Morgan Co. v. Minnesota Mining and Mfg. Co., —— Minn. ——, 246 N. W. 2d 443 (1971).

19, 1976, almost concurrently with the initiation of this action, Lavinia Hague was married to a Minnesota resident who operated an automobile service station in Bloomington, and established residence with her husband in Savage, Minnesota. The motorcycle which Ralph A. Hague was riding was owned by his son, Ronnie Hague, for about 1 year prior to the accident.

Ronnie Hague owned other vehicles that were insured by Allstate, but his motorcycle was not insured, Mr. Richard R. Borst was without valid insurance coverage at the time of the accident.

Ralph A. Hague was insured, at the time of the accident, by Allstate, which had issued one policy to the decedent (Policy No. 011 985 43), which policy extended coverage to three automobiles that Ralph A. Hague owned. A separate premium was paid for each such automobile. The policy was effective as of June 8, 1974, and it provided for uninsured motorist coverage to the limits of $15,000 for each such automobile.

On May 28, 1976, the Registrar of Probate for the County of Goodhue, State of Minnesota, appointed Lavinia Hague personal representative of the estate of her deceased husband, Ralph A. Hague. Subsequent to her appointment as personal representative, Lavinia Hague initiated the above entitled action against Allstate.

The plaintiff in this action, Lavinia Hague, widow of the deceased, Ralph A. Hague, is suing for declaratory relief construing the above indicated policy so as to "stack" the separate $15,000 uninsured motorist coverages on each automobile and therefore afford coverage in the total amount of $45,000. Questions of liability and amount of damages are not at issue in this proceeding, only the amount of coverage available. Plain-

tiff and defendant agree that if Minnesota law governs this case, "stacking" of the uninsured motorist benefits in the insurance policy is applicable.

Plaintiff's position is that:

(1) Minnesota courts have personal jurisdiction over all of the parties herein because plaintiff is a resident of Minnesota and was so prior to the commencement of this action, and defendant does business within Minnesota and is subject to personal service in this state.

(2) Under the choice of law doctrine adopted by Minnesota courts, Minnesota law should be applied to the question of "stacking" the uninsured motorist provisions of the automobile insurance policy under which Ralph A. Hague was insured.

Defendant's position is that:

(1) The question of "stacking" should be determined by the Wisconsin courts, since the accident took place in Wisconsin, and involved all Wisconsin residents, and

(2) Wisconsin courts have not yet determined the question of "stacking" under its new law and former decisions under the old law held against "stacking."

The issues presented by this appeal are:

(1) Did the trial court abuse its discretion in refusing to dismiss the complaint on the ground of forum non-conveniens?

(2) Does Minnesota or Wisconsin law apply to determine whether uninsured motorist coverage may be "stacked"?

We have three choices for a decision in this case: (1) We could hold that clearly the case ought to be declined in Minnesota and referred to Wisconsin for trial; (2) we could hold that the case was properly tried in Minnesota but Wisconsin law ought to apply; or (3) we could hold that the case should

be tried in Minnesota under Minnesota law. We find the third course of action to apply to this case for the reasons set forth herein.

(1) Forum non conveniens

Minnesota courts in their discretion may decline jurisdiction over transitory causes of action brought by non-resident citizens or non-citizens of this state when it fairly appears that it would be more equitable to have the case tried in another available court of competent jurisdiction. Johnson v. Chicago, Burlington & Quincy R. Co., 243 Minn. 58, 66 N. W. 2d 763 (1954). Although the cases speak of non-residents, it does not appear that the distinction between residents and non-residents is crucial, except insofar as it bears on the relative convenience of the parties.[2] The important factors to be considered in invoking the rule of forum non-conveniens were set out by the United States Supreme Court in Gulf Oil Corporation v. Gilbert, 330 U. S. 501, 508, 67 S. Ct. 839, 843, 91 L. ed. 1055, 1062 (1947), as follows:

> "* * * the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical prob-

[2] Fourth Northwestern National Bank of Minneapolis v. Hilson Industries, Inc., 264 Minn. 110, 117 N. W. 2d 732 (1962), decided that under the circumstances of that case there was no jurisdiction over a non-resident corporation. The case applied principles of forum non-conveniens and the "residency" of the plaintiff was not considered. The language of the Minnesota cases could be construed to require the court to retain jurisdiction over suits properly brought by resident plaintiffs, but cf. Savchuck v. Rush, —— Minn. ——, 245 N. W. 2d 624, 630 (1976), which indicates that resident plaintiffs are subject to forum non-conveniens. Savchuck was, however, vacated and remanded on other grounds by the United States Supreme Court, —— U. S. ——, 97 S. Ct. 2964, 53 L. ed. 2d 1086 (1977).

> lems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."

The present action was one for declaratory judgment which did not require witnesses. The plaintiff was a resident of this state and the defendant did extensive business within the state, see, Stevens v. American Mutual Insurance Co. 234 A. 2d 305, 308 (D. C. App. 1967). The decedent worked in Minnesota for 15 years and drove to and from his home in Wisconsin; a probate representative was appointed in Minnesota; there is no showing such a representative was appointed in Wisconsin. The only "inconvenience" is that Minnesota law, if applied, might be more liberal than Wisconsin law. There does not appear to be harassment or oppression involved in this lawsuit.

We do not, however, decide the issue of whether the district courts may decline jurisdiction over a resident's cause of action because, even if they may, there was no abuse of discretion here in refusing to dismiss the case. The mere fact that Wisconsin law may be different from Minnesota law is not sufficient reason to decline jurisdiction. Chubbuck v. Holloway, 182 Minn. 225, 234 N. W. 314 (1951), cited in Myers v. Government Employees Insurance Co. 302 Minn. 359, 367, 225 N. W. 2d 238, 241 (1974).

(2) Choice of Laws.

Defendant argues that even if Minnesota retains jurisdiction, Wisconsin law should be applied to prohibit "stacking" of the uninsured motorist coverage. Plaintiff contends that Minnesota law applies, but that there is no true conflict because Wisconsin law permits stacking.[3]

In Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973), this Court adopted a "methodology of analysis" for resolving conflicts of laws questions.[4] The analysis involves the following "choice-influencing considerations": (1) predictability of result, (2) maintenance of interstate and international order, (3) simplification of the judicial task, (4) advancement of the forum's governmental interest, (5) application of the better rule of law. Before applying the five factor analysis, the court must first determine whether the choice of one law will be "outcome determinative," i. e., whether there is an actual conflict. Myers v. Government Employees Insurance Co. *supra.* Thus if Wisconsin law would allow stacking, then the choice of law question need not be reached and the result reached by the trial court should be affirmed.

(a) Conflict of law.

The first question which we must determine is whether there is a conflict between the interests of Minnesota and Wisconsin in the present case. Interests of Wisconsin, in the present case, are grounded in the residence of the plaintiff at the time of the accident and making of the contract. The Wisconsin Supreme Court has articulated its state policy of insuring *minimum* recovery on the part of victims of uninsured

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[3] The parties agree that if Minnesota law is applied, then stacking is permitted.

[4] The approach adopted was taken from the proposal made by Professor Robert Leflar in *Choice Influencing Considerations in Conflict Law,* 41 N. Y. U. L. Rev. 267 (1966).

Motorists. Nelson v. Employers Mutual Casualty Co. 63 Wis. 2d 558, 217 N. W. 2d 670 (1974). This policy may be based in part on a desire to keep insurance premiums low while providing some protections against uninsured motorists.

Minnesota contacts with the facts of the case begin with plaintiff's residence at the time of suit, defendant's license to do business, and defendant's conduct of business in the state. There is no indication that she moved to Minnesota in an effort to forum shop. Thus, as the "justice administering state" Minnesota has at least one significant contact.[5] If this were an ordinary contract case, as defendant suggests, the analysis of Minnesota interest might end with the observation that Minnesota has an interest in maximizing the tort recovery of plaintiffs who are involved in accidents involving uninsured motorists. This policy is clearly articulated in the Minnesota stacking cases beginning with Van Tassel v. Horace Mann Insurance Co. *supra*. The stated governmental interest is grounded in a policy of compensating injured plaintiffs to the maximum extent of their injuries, even where this recovery is greater than minimum requirements.[6]

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[5] This interest was recognized in Milkovich v. Saari, 295 Minn. 155, 165, 203 N. W. 2d 408, 415 (1973), in the court's approving of the reasoning of Kell v. Henderson, 47 Misc. 2d 992, 293 N. 4 S 2d 647 (1965), affirmed, 26 App. Div. 2d 595, 270 N. 4 S 2d 552 (1966).

[6] Several jurisdictions have applied the law of the place of contracting to interpreting uninsured motorist provisions: Brooks v. Pennsylvania Manufacturers' Association Insurance Co. 62 N. J. 583, 303 A. 2d 884 (1973) (New Jersey residence insufficient contact to apply New Jersey law where policy issuance, accident, and pending workers compensation claim was in Pennsylvania); Travelers Indemnity Co. v. Stearns, 358 A. 2d 402 (N. H. 1976) (accident occurring in New Hampshire insufficient to apply New Hampshire uninsured motorist law where policy issued in Massachusetts to Massachusetts resident for car principally garaged in Massachusetts); Grayson v. National Fire Insurance Co. 313 F. Supp. 1002 (D. Puerto Rico, 1970) (Puerto Rico accident New Jersy law applied to policy issued to New Jersey residents in New Jersey).

Minnesota's contacts with and interest in the facts of the present case are, however, more extensive because the contract involved is one concerning automobile liability insurance. Insofar as the contract is one of indemnity for tort recovery, the kinds of contacts relevant to tort cases may be considered. The facts show that plaintiff's decedent traveled to work in Minnesota for 15 years. Thus, the risk which was covered by the policy was located in Minnesota as well as Wisconsin.

One additional interest, not addressed by the parties, is Minnesota's interest in the administration of estates. According to the stipulated facts, plaintiff was appointed personal representative of her husband's estate by a Minnesota court. The plaintiff as an heir resides in Minnesota. This interest was recognized in Travelers Insurance Company v. Davis, 490 F. 2d 536 (3 Cir. 1974). The court applied Pennsylvania law in upholding an arbitrator's decision which allowed stacking. The suit was brought by the executor of a Pennsylvania decedent's estate on a policy issued in Massachusetts for a death occurring in Texas. In the present case, the interests of Wisconsin are stronger than those of Massachusetts in Travelers Insurance Co. v. Davis, *supra*, because the decedent resided there, but nonetheless Minnesota has substantial contacts and interests.[7]

Although the interests of the two states coincide to the extent that both seek compensation of the victims of accidents

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[7] The contacts of the plaintiff with Minnesota are *less* substantial than those of the plaintiff in Gillen v. United Services Automobile Association, 300 So. 2d 3 (Fla. 1974), in which the Florida Supreme Court applied its law favoring stacking to an insurance policy entered into in New Hampshire. In Gillen the plaintiff and decedent had moved to Florida prior to the accident and the accident occurred in Florida. Thus, the risk of the policy had little substantial relation to New Hampshire. In the present case the risk was located primarily in Wisconsin, but was also located in Minnesota.

involving uninsured motorists, they diverge on the policies and interests underlying stacking. The Minnesota interest in full compensation for her residents injured by uninsured motorists is sufficient to allow the application of Minnesota law if otherwise warranted.

The question of whether Wisconsin law permits excess insurance clauses and thus limits stacking is difficult because the Wisconsin Supreme Court has never ruled on the issue under the statute in force at the time this policy was written. Neither the briefs nor the arguments of counsel, however, persuade us that the legislature or Supreme Court of Wisconsin would overrule the decision in Nelson v. Employer's Mutual Casualty Co. *supra*, in which the court upheld the validity of such clauses.[8] Thus, we find that Wisconsin law, in effect at the time of the writing of the policy, allowed "excess insurance" clauses and that stacking would not be permitted if Wisconsin law were to apply.

(b) Choice of Law.

Defendant argues that application of the five tests mandate application of Wisconsin law. It argues that predictability of result, interstate order, and advancement of the forum's governmental interest mandate this result. Plaintiff argues, as did the trial court, that the Milkovich line of cases involving foreign torts makes the advancement of the forum's governmental interest and better rule of law the only relevant considerations. The discussion of interests is based on the peculiar hybrid nature of the problems involved in automobile insur-

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[8] The legislative history of the statute is unclear. Wis. Stat. 1967, § 204.30(5) [now Wis. Stat. 632.32(3)(a)] was amended several times. The effect of these amendments is unclear, but the present statute is the same as that construed in Nelson v. Employer's Mutual Casualty Co. 63 Wis. 2d 558, 217 N. W. 2d 670 (1974).

ance. The analysis should determine the choice of laws by examining both tort and contract considerations.

(1) Predictability of results.

Defendant argues that this factor favors application of Wisconsin law because the insurer of a vehicle is concerned with setting of standard rates. Plaintiff argues that this analysis is mistaken insofar as defendant was reasonably to be presumed to travel in Minnesota and insofar as Minnesota law would clearly apply if the accident had occurred in Minnesota. This consideration weighs slightly in defendant's favor, but the fact that one cannot predict automobile accidents because they are unplanned makes predictability of results less important in automobile liability insurance cases than in other contract cases.

(2) Maintenance of Interstate Order.

This concept requires that the state whose laws are ultimately applied have sufficient contacts with the facts in issue. Milkovich v. Saari, *supra*; Schwartz v. Consolidated Freightways Corp. of Delaware, 300 Minn. 427, 221 N. W. 2d 667 (1974). As seen above, the contacts of both states are substantial. Leflar points out that retaliation by one state for mere forum preference of another state may also be considered in a decision to apply non-forum law where forum contacts are minimal. 41 N. Y. U. L. Rev. 287. In the present case, if the contacts with Minnesota were less substantial, this would be a stronger consideration. Under this heading the court may also consider whether or not application of Minnesota law will encourage forum shopping. (Id.) This would also be a strong consideration in the present case if there was any evidence that plaintiff had moved to this state for the purpose of institution of suit. This consideration thus does not require application of Wisconsin law.

(3) Simplification of the Judicial Task.

The parties appear to agree that this issue is irrelevant because there is an applicable Wisconsin statute which this court is capable of interpreting.[9]

(4) Advancement of the Forum's Governmental Interest.

Minnesota's governmental interest will most clearly be advanced by application of Minnesota law. The state's interest in fully compensating resident accident victims and thus keeping them off welfare roles and enabling them to meet financial obligations will be met most adequately by allowing stacking. The advancement of Minnesota's interest is only partially inconsistent with the advancement of Wisconsin's in that Wisconsin is interested in giving the plaintiff some recovery, but at minimum limits.

The factual contacts with this state are more limited than the contacts which mandated application of Minnesota law in Schwartz v. Consolidated Freightways Corp. *supra.* In Schwartz the plaintiff, injured in Indiana, was a lifelong Minnesota resident and employed by a Minnesota corporation at the time of the accident. Because the present case involves a third party insurance beneficiary rather than a plaintiff personally injured in an accident, we are not convinced that the Minnesota contacts are, in themselves, sufficient to mandate application of our law. Thus, we must consider the remaining factor.

(5) The Better Rule of Law.

This consideration clearly mandates application of Minnesota law. Minnesota follows a majority of jurisdictions in allowing stacking and this fact has been recognized by the Wisconsin Supreme Court. Nelson v. Employers Mutual

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[9] This would be clearer if the Wisconsin Supreme Court had expressly ruled on the issue.

Casualty Co. *supra.* Although majority status is not by itself sufficient to make a rule "better," the decisions on stacking are fairly recent and well considered in light of current uses of automobiles. Additionally, the line of decisions in Minnesota which favor stacking is impliedly based on the premise that the rule allowing stacking is the better rule of law.[10] We believe that it is preferable to compensate victims of accidents to the full extent of their injuries and we believe that is the policy adopted by the legislature. The Minnesota rule is better because it requires the cost of accidents with uninsured motorists to be spread more broadly through insurance premiums than does the Wisconsin rule.

The trial court is affirmed.

PETERSON, Justice (Concurring specially).

I concur only because the result follows from the court's decision in Milkovich v. Saari, 295 Minn. 155, 203 N. W. 2d 408 (1973).[11]

OTIS, Justice (dissenting).

At the time of this accident all of the drivers, owners, and passengers in both vehicles were residents of Wisconsin and the accident occurred in Wisconsin. For the reasons stated in my dissent in Savchuk v. Rush, —— Minn. ——, 245 N. W. 2d 630 (1976), where as here the contract of insurance with defendant was also entered in Wisconsin I can not agree that the rights of the parties should be determined by Minnesota law.

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[10] In Van Tassel v. Horace Mann Ins. Co. 296 Minn. 181, 207 N. W. 2d 348 (1973), this court expressly stated that the most convincing rationale on stacking was offered by cases which held restrictive clauses invalid.

[11] For a critical analysis of that decision, see 58 Minn. L. Rev. 199.

APPENDIX C

(Caption)

ORDER

The above-entitled matter came on for hearing before the undersigned, Judge of District Court, sitting in Special Term on the 15th day of March, 1977 upon Plaintiff's Motion for Summary Judgment and Defendant's Motion to Dismiss. Appearances were as follows:

Fred Burstein, Esq., appeared on behalf of the plaintiff.

Mark M. Nolan, Esq. appeared on behalf of the defendant.

The Court, having considered the arguments of counsel and all pleadings and papers of record contained herein, makes its Order as follows:

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment is granted.
2. Defendant's Motion to Dismiss is denied.
3. The attached Memorandum shall become a part of this Order.

By the Court:
ALLEN OLEISKY
Judge of District Court

Dated this 22nd day of April, 1977.

MEMORANDUM

The relevant facts surrounding this lawsuit are as follows: The Plaintiff, Lavina Hague, is the widow of Ralph Hague who was killed in an automobile-motorcycle accident on July 1, 1974. The plaintiff is also the Personal Representative of the Estate of Ralph Hague.

At the time of the accident, the Hague's were residents of Hager City, Wisconsin which is located approximately one and one-half (1 1/2) miles from Red Wing, Minnesota. It should be noted that the deceased was employed in Red Wing for approximately fifteen (15) years prior to his death.

Regarding the accident which resulted in Mr. Hague's death, he was a passenger on a motorcycle owned and operated by his son, Ronald Hague. On the day of the accident, the motorcycle was struck from behind by an automobile owned and operated by Richard Borst. As a result of the impact, Mr. Hague sustained personal injuries which in turn resulted in his death. This accident occurred in Pierce County, Wisconsin which is adjacent to the Minnesota-Wisconsin border. After the accident and prior to the initiation of the instant action, Mrs. Hague moved to Red Wing, Minnesota.

The Borst vehicle was uninsured at the time of the accident. Mr. Hague owned three vehicles at the time of the accident all insured under one policy, with separate premium provisions for each automobile. Allstate Insurance Company insured these vehicles with an uninsured motorist provision of $15,000.00 for each automobile covered under the policy.

In the instant declaratory judgment action, the plaintiff is suing the defendant, Allstate Insurance Company, under the uninsured motorist coverage provided by the policy for $45,000.00, which represents the aggregate amount of the uninsured coverage relating to each of the three automobiles owned by the deceased and insured by the defendant at the time of the accident.

Each party have motions before the court at this time. Defendant moves this Court for an Order dismissing the action without prejudice on the grounds of forum non conveniens. Plaintiff moves the Court for an Order granting her summary judgment in the Declaratory Judgment action.

The crux of defendant's Motion based on forum non conveniens is that plaintiff has engaged in forum shopping with the result being a subversion of justice. In conjunction with this argument, defendant alleges that Wisconsin law is de-

terminative of the issues herein. Based upon the arguments of forum non conveniens and the necessity to apply Wisconsin law, defendant moves to dismiss. In support of this argument defendant states that this action involves questions of law. Such being the case, convenience for plaintiff is of no relevance.

Naturally, plaintiff argues that the Minnesota courts have jurisdiction to entertain this matter. There is no dispute that the plaintiff herein is a resident of Minnesota and was so prior to the commencement of this action. Likewise, the defendant does business within Minnesota and subject to personal service in this state. Such being the case, there can be no argument with the proposition that this Court does have personal jurisdiction over all of the parties herein.

The secondary issue is which state law governs in the action. In Minnesota by virtue of the decision in *Van Tassel v. Horace Mann Insurance Company*, 296 Minn. 181, 207 N.W.2d 348 (1973), the stacking of uninsured motorist policy provision limits was specifically sanctioned.

Defendant argues that the law in Wisconsin does not permit stacking of uninsured motorist policy provision limits, and, since the accident occurred in Wisconsin, the rule of law in Wisconsin overrides the *Van Tassel* doctrine in Minnesota. The argument of counsel give rise to the issue of conflicts of law.

In passing on the issue of stacking in *Van Tassel, supra*, the Minnesota Supreme Court stated the following:

> [I]f the question must be resolved on the basis of who gets a windfall, it seems more just that the insured who has paid a premium should get all he paid for rather than the insurer should escape liability for that for which it collected a premium. . . .

207 N.W. 2d at 352.

Likewise the same rationale should and does apply to the issue as to conflicting laws. The Minnesota Supreme Court has adopted the rule and rationale of other courts in rejecting the rule of Rex Loci Delicti, specifically New York courts, and has indicated its determination to replace lex loci with a more rational choice-of-law methodology. *Milkovich v. Saari*, 295 Minn. 155, 203 N.W. 2d 408, 1973. In *Milkovich*, the Court opted for following the "better-law-concept" in choice of law situations. The compelling consideration therein, and in the instant case, are the advancement of the forums legitimate governmental interests and the application of the better law. The rule of *Milkovich* has replaced the traditional choice-of-law rules with a flexible approach which takes into account policy as well as factual considerations in arriving at a choice of law in a given situation.

The court placed great weight upon an article written by Professor Robert Leflar, wherein a five point methodology was set forth as an aid for evaluating conflicts problems. R. Leflar, "Choice-Influencing Considerations in Conflicts Law," 41 N.Y.U. L.Rev. 267, 279. In *Milkovich*, the Court pointed out that only two of Professor Leflar's rules are relevant to tort cases, specifically, advancement of the forum's governmental interest and application of the better rule of law. Applying these tests to the instant case, it is clear that the Minnesota law is the proper law to be applied herein.

The Minnesota Supreme Court elaborated upon *Milkovich* in *Schwartz v. Consolidated Freightways Corporation of Delaware*, 300 Minn. 487, 251 N.W. 2d 665 (1974). The Court therein held as follows:

> Once jurisdiction attaches, the forum may, subject to the rather minimal due process standards, apply its own choice-of-law rules to determine what law governs the

case. *Crider v. Zurich Insurance Co.*, 380 39, 85 S. Ct. 769, 13 L. Ed. 2d 641 (1965); *Home Insurance Co. v. Dick*, 281 U.S. 397, 50 S. Ct. 338, 74 L. 3d. 926 (1930). See also Professor Leflar's articles entitled "States' Rights in Conflicts of Law," 19 Ark. L. Rev. 142.

221 N.W. 2d at 668.

Based upon the authority of *Milkovich* and *Schwartz*, it is clear that this Court has both subject matter and personal jurisdiction for the purpose of entertaining this action in Minnesota. The rule in Wisconsin inhibiting stacking in inimical to the public policy of Minnesota which permits stacking. Since the plaintiff is a Minnesota resident entitled to the protection of her interests by the Courts of this state, its (Minnesota's) interest, her welfare and the maintenance of Minnesota's public policy principles require that we ignore the anti-stacking policy of Wisconsin in favor of the rule permitting the same in Minnesota. Accordingly, plaintiff is entitled to summary judgment.

A.O.

APPENDIX D

State of Minnesota
Supreme Court—ss.

MANDATE

THE STATE OF MINNESOTA

To the Honorable Judge and Officers of the District Court within and for the County of Hennepin Greeting:

WHEREAS, Lately in your Court, in action therein pending, entitled Lavinia Hague, Personal Representative of the Estate of Ralph Alvin Hague, deceased, Plaintiff, vs. Allstate Insurance Company, Defendant, a certain order was entered therein April 22, 1977 from which action of your Court an appeal thereafter was taken to this Court;

AND WHEREAS, The said cause came on to be heard before our Supreme Court, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the Court below herein appealed from, be, and the same hereby is, in all things affirmed and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this remittitur.

NOW THEREFORE, This MANDATE is to you directed and certified, to inform you of these proceedings in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith REMANDED to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

WITNESS, The Honorable ROBERT J. SHERAN Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this September 19, 1979.

JOHN McCARTHY
Clerk of the Supreme Court
By WAYNE TSCHIMPERLE
Deputy

STATE OF MINNESOTA, SUPREME COURT

LAVINIA HAGUE, Personal Representative
of the Estate of Ralph Alvin Hague, Deceased,
Respondent,

vs.

ALLSTATE INSURANCE COMPANY,
Appellant.

JUDGMENT

Pursuant to orders of Court heretofore duly made and entered in this cause it is determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Two Hundred Sixty-Five and 23/100 Dollars, ($265.23) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed September 19, 1979.

By the Court
Attest:
JOHN McCARTHY
Clerk

STATEMENT FOR JUDGMENT

Statutory Costs: $25.00
Printer: $240.23
Total: $265.23

Satisfaction of Judgment filed

A MOTION TO DISPENSE WITH THE PRINTING OF THE APPENDIX WAS MADE AND GRANTED

Supreme Court, U. S.
FILED
JAN 17 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-9381

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,

Respondent,

vs.

ALLSTATE INSURANCE COMPANY,

Petitioner.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

PLAINTIFF-RESPONDENT'S BRIEF

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IN THE

Supreme Court of the United States

October Term, 1979

No. ———

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,

Respondent,

VS.

ALLSTATE INSURANCE COMPANY,

Petitioner.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

PLAINTIFF - RESPONDENT'S BRIEF

QUESTION PRESENTED

Is the Minnesota Supreme Court's decision to apply the laws of Minnesota in this case in accord with the choice of law decisions of the United States Supreme Court and thereby warrant dismissal of the petition for writ of certiorari?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional basis for the petition is section 1 of the 14th Amendment to the United States Constitution which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws

and Article 4, Section 1 which provides in part:

> Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.

STATEMENT OF THE CASE

The Respondent agrees with the Statement of the Case contained in the Petitioner's Brief.

ARGUMENT

THE MINNESOTA SUPREME COURT'S DECISION TO APPLY THE LAWS OF MINNESOTA IN THIS CASE IS IN ACCORD WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT.

At this point the precise issue in controversy is whether the facts of the case warrant the granting of certiorari. Rule 19 of the rules of the Supreme Court concerns the granting of Certiorari and states in part:

> A review on writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered.
>
> where a State Court has decided a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court.

Sup. Ct. R. 19.

The Respondent's position is that an examination of the decisions of the United States Supreme Court that addresses the choice of laws issue involved in the case discloses that the Minnesota Supreme Court's choice of Minnesota law over Wisconsin law is in accord with the decisions of this Court, and therefore warrants a denial of certiorari. The Petitioner's request for certiorari is based upon the claim that the Minnesota Supreme Court's decision to apply Minnesota law to the facts of this case violates the Petitioner's right to due process and contravenes the full faith and credit clause of the constitution.

The constitutional issues now before this Court were first raised on a rehearing of the Minnesota Supreme Court's initial decision affirming the trial court's Order granting the Plaintiff's Motion for Summary judgment. Upon rehearing the Court en banc considered the Appellant's constitutional arguments and found that the reasons presented did not justify a reversal. *Brief of Petitioner at A-1.* Only two of the nine justices dissented from the majority's decision on rehearing.

The Minnesota Supreme Court's decision to apply the law of Minnesota was based upon an application of the methodology of analysis adopted in *Milkovich v. Sarri,* 295 Minn. 155, 203 NW2d 408 (1973). The *Milkovich* test is a five factor test that takes into account these choice of law considerations: predictability of result, maintenance of interstate and international order, simplification of the judicial task, advancement of the forum's governmental interests and application of the better law rule. Citing the ambulatory nature of the contract and Minnesota's contacts with the parties the Court found that the balance favored the application of Minnesota law.

According to Professor Leflar detailed choice of law rules which attempts to designate the constitutional limitations to a State's application of its laws in a multi-state transaction are no longer appropriate. *See R. Leflar, American Conflicts Law* 110 (3ed. 1977). In *Alaska Packers Ass'n v. Industrial Accident Commission,* 294 U.S. 532, 541-42 (1935) the Court found that objections based upon the 14th Amendment to a State's application of its laws to an injury that occurred beyond its territorial boundaries are judged as to whether its application amounted to an arbitrary or unreasonable denial of due process. In respect to the full faith and credit clause

the Court has held that it does not require one State to substitute for its own laws the conflicting or inconsistent law of another State, even though that law is of controlling force in the foreign state with respect to the same persons and events. *Pacific Employers Ins. Co. v. Industrial Accident Commission,* 306 U.S. 493 (1939) (full faith and credit clause did not preclude California from applying its own Worker's Compensation Act where a Massachusetts employee of a Massachusetts employer suffered an injury while working in California).

Of special significance is the fact that this case concerns an ambulatory contract. The Supreme Court recognized the fact that ambulatory contracts warrant more States than one to regulate local activities which are part of multi-state transactions in order to protect the interests of its own people. *See Watson v. Employers Liability Ins. Co.,* 313 U.S. 487 (1941). In the case of *Clay v. Sun Ins. Office, Ltd.,* 377 U.S. 179 (1964) the Supreme Court upheld the application of Florida law to a suit by the insured on a policy issued to him while he was a resident of Illinois. The loss occurred in Florida about two years later. The policy required notice of claims to be given within one year from the date of the loss; Florida law nullified any contractual provision which provided a shorter time for making a claim than did its statute of limitations, which gave Clay five years in which to make a claim. Speaking for the Court Justice Douglas disposed of the insurer's constitutional objections stating:

> We see no difficulty whatever under either the full faith and credit clause or the due process clause. We deal with an ambulatory contract on which suit might be brought in any one of several states.
>
> . . . .

> The Court of Appeals relied in the main on *Hartford Accident and Indemnity Co. vs. Delta and Pine Land Co.*, 292 U.S. 143, and *Home Insurance Co. vs. Dick*, 281 U.S. 397. Those were cases where the activities in the state of the forum were thought to be too slight and too casual, as in the Delta and Pine Land Co. case. 292 U.S. at 15, to make the application of local law consistent with due process, or wholly lacking, as in the Dick case. No deficiency of that order is present here. As Mr. Justice Black, dissenting, said when this case was here before: 'insurance companies, like other contractors, do not confine their contractual activities and obligations within state boundaries. They sell to customers who are promised protection in states far away from the place where the contract is made. In this very case the policy was sold to Clay with knowledge that he could take his property anywhere in the world he saw fit without losing the protection of his insurance. In fact, his contract was described on its face as a personal property floater policy (worldwide). The contract did not even attempt to provide that the law of Illinois would govern when suits were filed anywhere else in the country. Shortly after the contract was made, Clay moved to Florida and there he lived for several years. His insurance property was there all that time. The company knew this fact. Particularly since the company was licensed to do business in Florida, it must have known it might be sued there . . .'. 363 U.S. at 221, 80 S. Ct. at 1230.

Id. at 181-82. *See also, Confederation Life Ins. Co. v. DeLara*, 257 So. 2d 42 (Fla. 1972), *cert. denied*, 409 U.S. 953 (1972); *Confederation Life Ass'n v. Vega*, 207 So. 2d 33 (Fla. Dist.

Ct. App.), *aff'd* 211 So. 2d 169 (Fla.), *cert. denied*, 393 U.S. 980 (1968).

Citing *Clay* the Third Circuit Court of Appeals recognized in *Travelers Ins. Co. v. Davis*, 490 F.2d 536 (3rd Cir. 1974) the power of several states to apply their law to a contract with multi-state aspects. In Davis the deceased insured's executors were citizens of Pennsylvania. Suit was brought in the Federal District Court for the Eastern District of Pennsylvania; the issue was whether or not Pennsylvania law governed the issue of the stacking of uninsured motorists coverage with respect to a claim under an automobile liability insurance policy made in Massachusetts arising out of an accident which occurred in Texas. The Court held that Pennsylvania's interest in the case was greatest because the executors were citizens of the State, the State had a vital concern in the administration of the estate and well being of the dependents and therefore under Clay permitted the application of Pennsylvania law. *Id.* at 543.

The basic principle that emerges from this line of cases is that when there is an ambulatory contract, a decision to apply the laws of the forum state is consistent with due process when the parties have sufficient contact with the forum state. In other words, did the forum state apply its law in an arbitrary or unreasonable manner. An examination of the facts of the case at bar discloses that the manner of the Minnesota Supreme Court's resolution of the choice of law issue was not arbitrary and unreasonable. It is undisputed that: (1) the decedent had worked for the past 15 years in the State of Minnesota and had driven across the Minnesota-Wisconsin border almost daily to his employment; (2) plaintiff, the personal representative of the decedent, was appointed in Minnesota; (3) the decedent's personal repre-

sentative was not a party to the contract; (4) the petitioner does business in Minnesota and is subject to the insurance division's supervision; (5) the insurance policy is an ambulatory contract and might be sued on in any state; (6) the policy covered risks within Minnesota by virtue of the decedent's presence within the State; and (7) the State of Minnesota is vitally concerned with the administration of decedents' estates and well being of any surviving dependents who are residents of this State.

The line of cases cited in the Petitioner's Brief fail to provide the foundation necessary to justify certiorari since their holdings are based upon factual considerations not present in the case at bar. In *Home Ins. Co. v. Dick,* 281 U.S. 397 (1929), the Court's resolution of the case was premised on the fact that the forum state's only contact with the contract between the litigants was that *Dick* was a resident of the forum state. This is clearly not the case here since the Respondent's residence was only one of many factors which the Minnesota Supreme Court based their choice of law decision upon. In *John Hancock Life Ins. Co. v. Yates,* 299 U.S. 178 (1936), the choice of law issue concerned a substantive right which went to the validity of the contract. The case at bar presents an issue concerning the extent and character of remedies available. Therefore the Minnesota Supreme Court's resolution of the conflicts of law issue in the case at bar is not contrary to the Court's decision in *Yates.* Finally, the case of *Hartford Accident and Indemnity Co. v. Delta and Pine Land Co.,* 292 U.S. 143 (1934), is inapplicable to the case at bar since it was decided under rigid principles of conflicts of law that are now obsolete. *See Watson v. Employers Liability Ins. Corp.,* 348 U.S. 66 (1954); *Carroll v. Lanza,* 349 U.S. 408 (1954).

CONCLUSION

Certiorari is a matter of judicial discretion and is appropriate in those cases where the state's resolution of a federal question is not in accordance with the applicable decisions of the United States Supreme Court. The previous review of the pertinent decisions discloses that the application of the forum state's law is constitutionally permissible where the parties contacts with the forum state are not too slight or casual. The Court has also recognized that state's interests are as relevant and important as factual contacts in choice of law cases. In the instant case not only are the factual contacts legitimate and significant, but Minnesota also has a substantial and compelling interest in protecting its citizens who have suffered a loss.

Minnesota's contacts with the risk, the occurrence and the parties are not too light or casual so that application of Minnesota law constitutes a violation of the due process clause of the United States Constitution. A State Court's choice of law will be upset under the full faith and credit clause or the due process clause only when the state whose law is applied has no legitimate interest in its application. Such is not the case here and accordingly certiorari should be denied.

Respectfully submitted,

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Supreme Court, U. S.
FILED
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IN THE

Supreme Court of the United States

October Term, 1980

No. 79-938

ALLSTATE INSURANCE COMPANY,
Petitioner,

vs.

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITIONER'S BRIEF

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IN THE

Supreme Court of the United States

October Term, 1980

No. 79-938

ALLSTATE INSURANCE COMPANY,

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LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITIONER'S BRIEF

OPINION BELOW

The order and memorandum of the trial court appear at Appendix C to Petition for Writ of Certiorari, A-25; the opinion of the Minnesota Supreme Court on appeal appears at Appendix B to Petition for Writ of Certiorari, A-12; and the opinion of the Minnesota Supreme Court on rehearing appears at Appendix A, A-1. The opinion of the Minnesota Supreme Court on rehearing has not yet been officially reported.

JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was entered on September 19, 1979. A copy of this judgment appears at Appendix D to Petition for Writ of Certiorari, A-31. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

This jurisdiction is invoked because the present opinion of the Minnesota Supreme Court is repugnant to certain constitutional provisions and prior decisions of this court.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution and the Full Faith and Credit Clause of the United States Constitution.

Section 1 of the Fourteenth Amendment to the United States Constitution, in pertinent part, provides:

> No State shall . . . deprive any person of life, liberty or property, without due process of law . . .

Article 4 §1 of the United States Constitution, in pertinent part, provides:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. . . .

STATUTE INVOLVED

The Minnesota Statute involved, in pertinent part, provides:

> §65.14, Subd. 1—'Policy of automobile liability insurance' means a policy delivered or issued for delivery in this state . . .

QUESTION PRESENTED

Should the constitutional mandates of the due process section of the Fourteenth Amendment of the U. S. Constitution and the Full Faith and Credit Clause of the U. S. Constitution, as enunciated by this Court in *Home Insurance Company v. Dick*, 281 U.S. 397, 50 S.Ct. 338 (1930), *Hartford Accident and Indemnity Company v. Delta Pine and Land Company*, 292 U.S. 143, 54 S.Ct. 634 (1934), *John Hancock Mutual Life Insurance Company v. Yates*, 299 U.S. 178, 57 S.Ct. 129 (1936), *Rush v. Savchuk*, —— U.S. ——, 100 S.Ct. 571 (1980), and *Worldwide Volkswagen Corporation v. Woodson*, —— U.S. ——, 100 S.Ct. 559 (1980), be frustrated by the Minnesota Supreme Court's choosing their law to interpret a contract drawn in Wisconsin as it relates to an accident which took place in Wisconsin between Wisconsin residents?

STATEMENT OF THE CASE

The following is a stipulated-to statement of the facts which was presented to the Minnesota Supreme Court:

> The cause of action upon which this case is based arises out of an automobile and motorcycle accident which occurred on July 1, 1974 in Pierce County, Wisconsin, which is immediately adjacent to the border near Red Wing,

Minnesota. Ralph A. Hague was a passenger on a motorcycle owned and operated by his son, Ronald Hague.

The Hagues were traveling west on Highway 35, and they intended to turn left (to the south) onto a road that led to Elderwood Heights, Wisconsin. They slowed to an eventual stop and signaled their intention to make a left turn. While waiting for an eastbound car to pass in the oncoming or opposite lane, the motorcycle was struck from behind by an automobile owned and operated by Mr. Richard R. Borst, a resident of Ellsworth, Wisconsin. Mr. Ralph A. Hague died as a result of injuries sustained in this accident.

At the time of the accident, Ralph A. Hague resided with his wife, Lavinia Hague, in Hager City, Wisconsin, which is located just one and one-half (1-1/2) miles from Red Wing, Minnesota. Although Ralph A. Hague resided in Wisconsin, he was employed in Red Wing, Minnesota, and he had been employed in Red Wing for fifteen (15) years immediately preceding his death. After the accident, and prior to the initiation of the above entitled matter, Lavinia Hague moved her residence to Red Wing, Minnesota. On June 19, 1976, almost concurrently with the initiation of this action, Lavinia Hague was married to a Minnesota resident who operated an automobile service station in Bloomington, and established residence with her husband in Savage, Minnesota. The motorcycle which Ralph A. Hague was riding was owned by his son, Ronnie Hague, for about one year prior to the accident.

Ronnie Hague owned other vehicles that were insured by Allstate, but his motorcycle was not insured. Mr. Richard R. Borst was without valid insurance coverage at the time of the accident.

Ralph A. Hague was insured, at the time of the accident, by Allstate, which had issued one policy to the decedent (Policy No. 011 985 43), which policy extended coverage to three automobiles that Ralph A. Hague owned. A separate premium was paid for each such automobile. The policy was effective as of June 8, 1974, and it provided for uninsured motorist coverage to the limits of $15,000.00 for each such automobile.

On the 28th day of May, 1976, the Registrar of Probate for the County of Goodhue, State of Minnesota, appointed Lavinia Hague personal representative of the estate of her deceased husband, Ralph A. Hague. Subsequent to her appointment as personal representative, Lavinia Hague initiated the above entitled action against Allstate.

The plaintiff in this action, Lavinia Hague, widow of the deceased, Ralph A. Hague, is suing for declaratory relief construing the above indicated policy so as to "stack" the separate $15,000.00 uninsured motorist coverages on each automobile and therefore afford coverage in the total amount of $45,000.00. Questions of liability and amount of damages are not at issue in this proceeding, only the amount of coverage available. Plaintiff and defendant agree that if Minnesota law governs this case, "stacking" of the uninsured motorist benefits in the insurance policy is applicable.

The record does not reflect anything more about why a probate was begun in the State of Minnesota nearly two years after the death of Mr. Hague and whether it was ancillary to one in the State of Wisconsin, where the homestead of the decedent was. At the trial court level, cross motions for summary judgment were brought. The respondent Hague's motion was granted and the petitioner Allstate's motion was denied. Allstate then appealed to the Minnesota Supreme Court which af-

firmed the trial court. Allstate then petitioned for a rehearing on the matter and the petition for rehearing was granted. The matter was then reheard, but the Minnesota Supreme Court again affirmed the trial court. The appeal to this Court follows.

ARGUMENT

A. THE MINNESOTA COURT'S DECISION IS REPUGNANT TO CHOICE OF LAW DECISIONS OF THIS COURT.

Topically defined, the issue before this court is one of "choice of law". The decision of the Minnesota State Supreme Court chose the law of Minnesota, the forum state, over the law of Wisconsin in a dispute involving the interpretation of insurance contracts which were underwritten, applied for, and paid for by Wisconsin residents and issued covering cars garaged in Wisconsin. Additionally, the incident giving rise to the dispute was an automobile accident which occurred on Wisconsin roads involving three Wisconsin residents. At the time of the incident or occurrence giving rise to the interpretation of this Wisconsin insurance policy, there were no contacts with the State of Minnesota.

There is no dispute in this case as to jurisdiction. Minnesota has the right to take jurisdiction over this case involving a contract interpretation because Allstate does business in Minnesota. It is also the law of the case that Minnesota has concluded that Wisconsin law would not allow stacking of insurance policies in question and Minnesota law would allow stacking. Additionally, it is undisputed that Lavinia Hague, the widow of the decedent killed in the above referenced automobile accident, was a resident of Wisconsin at the time of

this accident and thereafter moved to Minnesota and began this action after she moved to Minnesota.

It is petitioner Allstate's position that under these circumstances the contacts of Minnesota to the transactions and occurrences giving rise to this litigation are so "slight and casual", that Minnesota's choice of its law under these facts violates the constitutional dictates of the "Due Process" Amendment and the "Full Faith and Credit" provision of the U. S. Constitution. In support of Allstate's position, the following cases of this Court are cited and described:

1. *Home Insurance Company v. Dick*, 281 U.S. 397, 50 S.Ct. 338 (1930). The case involved interpretation of an insurance policy which had been issued to a Mexican in Mexico covering a Mexican risk. The policy was subsequently transferred to Mr. Dick, who was a domicilliary of Mexico, but a permanent resident of Texas. The loss occurred in Mexican waters. The Supreme Court held that application of Texas law over Mexican law was a violation of due process under such circumstance. In so doing they indicated that the residency of Mr. Dick in Texas was of no relevance to the choice of law, just as Mrs. Hague's subsequent residency in Minnesota should have nothing to do with Minnesota's choice of law.

2. *Hartford Accident and Indemnity Company v. Delta Pine and Land Company*, 292 U.S. 143, 54 S.Ct. 634 (1934). A fidelity bond was written in Tennessee by Hartford Insurance Company to cover fraud and dishonest acts of the employees of Delta Pine and Land Company. Delta Pine and Land Company and the defaulting employee subsequently moved to Mississippi and the loss on the bond took place in Mississippi. Hartford Insurance Company did business both in the State of Mississippi and the State of Tennessee. Delta Pine's

subsequent claim under the bond was not made within the time limitation on actions under the surety contract. The law of the State of Mississippi voided such contract limitations while the law of the State of Tennessee did not. The action was brought in Mississippi and the Mississippi court indicated that under these facts it would apply its own law and void the contract limitations, thereby ordering Hartford to pay Delta Pine. The U. S. Supreme Court said that the courts of Mississippi could not impose the law of Mississippi and to do so was a violation of due process when Mississippi had such "slight and casual" contact with the transaction, and Tennessee was the state where the contract was negotiated and made.

In so holding this court stated:

> A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated, and to convert them for all purposes into contracts of the forum, regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the 14th Amendment. 54 S.Ct. 636.

3. *John Hancock Mutual Life Insurance Company v. Yates*, 299 U.S. 178 (1936). In this case, an action on a life insurance policy was brought. In May of 1932, the John Hancock Mutual Life Insurance Company, a Massachusetts corporation, insured the life of Harmon F. Yates, agreeing to pay upon his death $2,000.00 to his wife. The policy was applied for, issued and delivered in New York where Mr. Yates and his wife resided, and where they remained until his death of cancer in the following month. Subsequently his widow moved to Georgia and brought suit on the policy in Georgia.

John Hancock denied payment on the policy because it contended that answers in the policy application as to whether the applicant was then in good health and whether he had ever been treated for cancer and other questions had been answered falsely and that these were material misrepresentations, which under the law of New York voided the policy. Georgia law indicated that whether the answers given by the insured in the application are material misrepresentations was a matter for the jury and applied its own law over that of New York's and let the matter go to the jury, where the jury awarded the policy benefits.

This court granted certiorari and reversed the Georgia court, indicating that the Georgia court failed to give full faith and credit to the New York statute under such circumstances. This court stated, as the petitioner feels in this case, that:

> Petitioner's right to the protection claimed under the Constitution was denied by the Supreme Court of Georgia. The rights of the petitioner can now be protected only by this court.

Some decisions of this court have allowed application of a forum state's law over that of a contracting state. (*Clay v. Sun Insurance Office Ltd.*, 363 U.S. 207, 80 S.Ct. 1222 (1960), 377 U.S. 179, 84 S.Ct. 1197 (1964), *Watson v. Employer's Liability Insurance Corporation*, 348 U.S. 66, 75 S.Ct. 166 (1954), and certain workers' compensation cases, such as *Pacific Employer's Insurance Company v. Industrial Accident Commission*, 306 U.S. 493, 59 S.Ct. 629 (1939).) In each of those cases however, where the court has accepted the forum state's choice of its own law, a significant contact relating to the incident giving rise to the claim or to the contract being interpreted,

occurred within the forum state. In *Watson* the plaintiff was injured in Louisiana, the forum state, and the forum state allowed direct action suits against the insurer. In *Clay*, the loss occurred in the forum state of Florida and the decedent had been making insurance payments from the State of Florida prior to the loss. In *Pacific Employer's*, California was the forum state and the employee was injured in California. There is no case of which we are aware which applies the forum state's law when, at the time of the occurrence, there were no contacts whatever with the forum state except a place of employment which was unrelated to the events giving rise to the litigation.

The only litigation-related contact with the State of Minnesota in this case is that, after the accident giving rise to the declaratory judgment, the widow moved to Minnesota and began the action. In *Home Insurance Company* (supra), the court indicated that Mr. Dick's residency in the State of Texas, even at times pertinent to the loss, was not a pertinent contact in the consideration of choice of law:

> The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to effect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon, and to seize property in payment of the imposed obligation, violates the guaranty against deprivation of property without due process of law. 281 U.S. 408, 50 S.Ct. 341, 74 L.Ed. 933.

If you dismiss the relevancy of the residency of the respondent, established after the accident in question, there is virtual-

ly no contact with the State of Minnesota. Moreover, in *Delta Pine and Land Company* (supra), the event giving rise to the litigation occurred in the forum state and that was not enough contact with the forum state for it to apply its own law. In the instant case we have no incident or contact within the State of Minnesota.

If the Minnesota Supreme Court's decision is to be upheld, then any plaintiff, especially in representative actions such as this, could choose, to bring the lawsuit, a representative-resident of that state whose laws are most favorable to their position in the case and could expect that the forum state would choose its law, even if the forum state had had no prior contacts with the matter prior to their citizen-representative bringing the action. The Minnesota Court forthrightly indicated in footnote No. 6 to their original decision (A-19) that several other state courts have chosen the state of contracting to be dispositive as to choice of law. In footnote No. 7 (A-20) they concede that the state court which ruled otherwise had more contacts with the contract than they did in the instant case. After acknowledging this though, they give no reason why they chose to continue to accept Minnesota law in their original opinion and on rehearing. The majority in both decisions entirely avoided the constitutional ramifications of the decision.

B. RECENT JURISDICTIONAL DECISIONS SUPPORT PETITIONER'S POSITION.

This court has very recently decided the case of *Rush v. Savchuk*, —— U.S. ——, 100 S.Ct. 571 (1980). In that decision this court held that Minnesota could not, consistently with due process, exercise quasi in rem jurisdiction over the defendant

who had no forum contacts by attaching a contractual obligation of a liability insurance company which was licensed to do business in the state. Although *Savchuk* was a jurisdictional case, as opposed to a choice of law case, the reasoning of the court is helpful to the court's determination in this case.

Also decided contemporaneously with *Savchuk* was *Worldwide Volkswagen Corporation v. Woodson,* —— U.S. ——, 100 S.Ct. 559 (1980) in which this Court refused to extend Oklahoma's long-arm statute to corporate defendants who were automobile wholesalers and retailers who sold an automobile in New York which subsequently had an accident in Oklahoma.

The similarity between the constitutional questions presented in cases dealing with choice of law and those governing jurisdictional problems was pointed out in *Hanson v. Denckla,* 357 U.S. 235, 258, 78 S.Ct. 1228, 1242, 2 L.Ed. 1283, 1300 (1958), where Mr. Justice Black in his dissent noted:

> True, the question whether the law of a state can be applied to a transaction is different from the question whether the court of that state had jurisdiction to enter a judgment, but the two are often closely related and to a substantial degree depend upon similar considerations.

In the *Savchuk* case, the considerations which this court deems important to its decision were minimum contacts with the forum state. As Justice Marshall stated:

> That is, a State may exercise jurisdiction over an absent defendant only if the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fairplay and substantial justice' ". *International Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95

> (1945). In determining whether a particular exercise of state-court jurisdiction is consistent with due process, the inquiry must focus on "the relationship among the defendant, the forum, and the litigation". 100 S.Ct. 577.

In comparing this reasoning to our case, the Minnesota court should have shown that it has a relationship with the transaction which is being interpreted, with the occurrence which gave rise to the interpretation of the transaction, and the petitioner. There is no question but that Minnesota had no relation to the transaction (the contract) and the occurrence (the accident) which gives rise to the interpretation of the transaction. Minnesota does have a relationship with the petitioner Allstate, merely because Minnesota is one of fifty states in which the petitioner does business. However, the *Savchuk* case gave short shrift to the fact that State Farm did business in Minnesota where it said:

> State Farm is "found", in the sense of doing business, in all 50 States and the District of Columbia. Under appellee's theory, the "debt" owed to Rush would be "present" in each of those jurisdictions simultaneously. It is apparent that such a "contact" can have no jurisdictional significance. 100 S.Ct. 578.

Just as such a "contact" should have no jurisdictional significance, it should also have no choice of law significance.

Worldwide Volkswagen (supra) also gave us some insight as to the reason for the concept of minimum contacts which are very pertinent here. The Court stated:

> The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating

> in a distant or inconvenient forum. And it acts to ensure that the States through their courts do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system. 100 S.Ct. 564.

It is of course the latter function which concerns us in this case as Minnesota took that step beyond the limits imposed on them in their status as a co-equal sovereign with Wisconsin in the federal system.

C. THE MINNESOTA COURT'S DECISIONS VIOLATE RULES OF SOVEREIGNTY AND REASONABLE EXPECTATIONS WHICH MINNESOTA ADMITTEDLY RECOGNIZES AS VALID.

It is clear by the laws of the State of Minnesota that they would be offended by another state doing the same thing to them that they have done to the State of Wisconsin. Minnesota Statutes have even defined an automobile policy as one delivered within the confines of their state. M.S. 65B.14, Subd. 1 states in pertinent part:

> 'A policy of automobile liability insurance' means a policy delivered or issued for delivery in this state . . .

By such a statute Minnesota has recognized the ability of its own state to define and regulate insurance policies within its own state, and yet refuses to acknowledge Wisconsin's sovereignty to do the same. Moreover, in the case of *Bolgrean v. Stich*, 293 Minn. 8, 196 N.W.2d 442 (1972), the Minnesota court recognized and concluded that insurers do charge rates with an eye toward the state in which the policy is issued. The court stated:

> The only party concerned with predictability is the insurer of the host's vehicle and the insurer of a Minnesota vehicle, it must be assumed, charged rates applicable to Minnesota risks. 196 N.W.2d 444.

Justice Otis, in his well-worded dissent from the Minnesota Supreme Court's decision on rehearing, points out succintly the rights of expectation Allstate should have been afforded wherein he stated as follows:

> The rights of this defendant, (Allstate) which are in my opinion constitutionally protected, were vested at the time it entered its contract for insurance with the decedent in Wisconsin prior to July 1, 1974. At that time stacking had been held unavailable by the Wisconsin court in its Nelson decision (*Nelson v. Employer's Mutual Casualty Co.*, 63 Wis.2d 558, 217 N.W.2d 670 [1974]) filed May 20, 1974. Defendant had a right to rely on that decision in fixing its rates and in actuarially assessing its exposure. Where the contract was entered into in Wisconsin by Wisconsin residents, who were exposed primarily to Wisconsin hazards, and the loss which could be anticipated did in fact occur in Wisconsin and was wholly unrelated to the hazards of any other state, defendant had a right to rely on the application of Wisconsin law. The *Restatement, Conflict of Laws 2d*, §188, Comment b, states the case well:
>
> > ". . . Parties entering a contract will expect at the very least, subject perhaps to rare exceptions, that the provisions of the contract will be binding upon them. Their expectations should not be disappointed by application of the local law rule of a state which would strike down the contract or a provision thereof unless the value of

> protecting the expectations of the parties is substantially outweighed in the particular case by the interest of the state with the invalidating rule in having this rule applied. The extent of the interest of a state in having its rule applied should be determined in the light of the purpose sought to be achieved by the rule *and by the relation of the transaction and the parties to that state.*" (Italics supplied.)
>
> Granted that the Minnesota rule of law is better, in the absence of any substantial interest by this state in the subject of the litigation, our intrusion into the rights of those who have transacted business in good faith elsewhere verges on meddling in the judicial policy of a sister state if we deny the legitimate expectations of a contracting party by applying Minnesota law on the fragile grounds here asserted. (A-10-12)

A relatively recent Minnesota Law Review case discussing the propensity of the Minnesota Supreme Court to apply their law on fragile grounds contained the following language which is very appropriate to the situation presented in this case:

> One of the traditional purposes of conflict-of-laws rules has been to aviod this evil (forum shopping)—to establish minimum guidelines for interjurisdictional disputes to prevent the plaintiff from being able to shop for the jurisdiction most likely to award him damages. The Minnesota Court ignored this factor in its consideration, for its new methodology might well be labeled either as "forum law applies", or more simply "plaintiff wins". 58 Minnesota Law Review 203.

D. RESPONDENT'S MINNESOTA "CONTACTS" ARE EITHER INSIGNIFICANT OR OUTWEIGHED BY THOSE OF WISCONSIN.

In anticipation of the respondent's argument we refer to their brief opposing the Petition for Certiorari and the reasons which they cited therein that Minnesota had ample reason for its decision.

1. Respondent's first argument is that the decedent worked for 15 years in the State of Minnesota and had driven across the Minnesota-Wisconsin border almost daily to his employment. First of all, we don't know what the decedent's driving arrangement to work was. We have no idea whether there was a car pool, daily sales trips, or what the arrangement was. Nevertheless, such a contact with Minnesota is neither related to the transaction, which took place in Wisconsin, nor the occurrence giving rise to the transaction, which took place in Wisconsin.

2. The second argument of respondent is that the respondent, the personal representative of the decedent, was appointed in Minnesota. Here again, this has nothing to do with either the transaction or the occurrence giving rise to this lawsuit and, in effect, is somewhat misleading, since I would presume that the decedent being a resident of the State of Wisconsin also had probate in Wisconsin and that actually Minnesota's probate was an ancillary proceeding, although the record is somewhat muddled in this regard.

3. The third argument advanced by the respondent is that the respondent's representative was not a party to the contract. I would think this would argue against application of Minnesota law and point up the ability to forum shop if somehow

having a representative not associated with the contract would be a contact significant to the forum state adopting its law. Furthermore, in *Delta Pine*, the person who created the default on the bond was not a party to the contract; in *Yates* (supra) the widow was not a party to the contract; yet, in both cases the Supreme Court did not choose the state's law where those two people resided.

4. The fourth argument advanced is that the petitioner does business in Minnesota and is subject to the insurance division's supervision. This argument is dealt with in the reasoning in *Savchuk* as referred to above.

5. The fifth argument is that the insurance policy is an ambulatory contract and might be sued on in any state. While this is true, the previous decisions of this court have indicated that in other ambulatory contracts, there still must be contacts with the forum state which are not so slight and casual as to preclude the forum state from the choice of their law.

6. The sixth argument advanced is that the policy covered risks within Minnesota by virtue of the decedent's presence within the state. Presumably this refers to the decedent traveling to Minnesota. I would assume he traveled to other states in the union and I cannot believe this court would indicate that that would provide grounds for the respondent to choose the laws of those states.

7. The seventh argument advanced by the respondent is that the State of Minnesota is vitally concerned with the administration of decedents' estates and the well-being of any surviving dependents who are residents of this state. In this regard the record is muddled as to what kind of probate took place in Minnesota and the location of any surviving dependents. What is misleading about this argument is that there

likely was a probate in Wisconsin which would nullify the argument. Additionally, a wrongful death action in Minnesota is brought for the benefit of the next of kin. The record does not disclose where the next of kin of this decedent are, but the ages of the next of kin are such that they have likely remained in Wisconsin.

Moreover, even if there was some validity to any of the arguments advanced by the respondent, the previous decisions of this court on choice of law and the recent cases of this court on jurisdiction, indicate that the contacts with Wisconsin, as compared with those Minnesota contacts, are so overwhelming as to make the Minnesota contacts appear to be "slight and casual" in comparison, and application of Minnesota law, based upon them, is a violation of "traditional notions of fair-play and substantial justice".

CONCLUSION

In the choice of law cases cited in this brief and in all cases brought before the Minnesota Supreme Court, there has never been any state court or U. S. Supreme Court decision in which the forum court chose its own law over that of a competing state when the contract was not drawn in the forum state, the occurrence giving rise to interpretation of the contract did not take place in the forum state, and the parties to the dispute were not all residents of the forum state at the time of the occurrence.

If you freeze the facts at the time of the accident giving rise to this litigation, there is not one contact with the State of Minnesota surrounding either this transaction or the occurrence. There is good reason in choice of law cases to freeze or vest the contacts at the time of the occurrence giving rise to

the litigation because if you allow the contacts to develop after the occurrence, then a situation of forum-shopping is fostered.

If, however, the significant contacts are not frozen at the time of the occurrence, the only other contact with the State of Minnesota that developed after the occurrence was the subsequent residency of the representative bringing this lawsuit. With regard to that contact, it is a dangerous one to deem significant in choice of law situations because there would then be virtually no restraint on forum-shopping because the representative could be chosen from any state and the lawsuit then commenced. Moreover, the case of *Home Insurance Company v. Dick* (supra) has indicated that this contact is not significant. The case itself said it as indicated in the quoted portions cited above and that this was true is reiterated in the case of *Clay v. Sun Insurance Office Ltd.* (supra), where the court, referring to the *Dick* decision, indicated that activities in the state of the forum which could be significant contacts for a choice of law were "wholly lacking" in the *Dick* case (377 U.S. 181, 84 S.Ct. 1198), and a footnote therein quotes, among other things, the sentence set forth earlier in our brief, "the fact that Dick's permanent residence was in Texas is without significance".

Therefore, Minnesota clearly has absolutely no contacts with this litigation whether we examine its contacts at the time of the transaction, or the time of the occurrence giving rise to the dispute, or if we examine facts which occurred after the occurrence and transaction. The only contact in the State of Minnesota with this case, namely the after-acquired residency of Mrs. Hague, has previously been dismissed in other choice of law cases before this court.

Minnesota has shown little or no concern for the sovereignty of the State of Wisconsin. Instead the Supreme Court of Minnesota has stretched every possible contact with the State of Minnesota and failed to at all compare those contacts with the overwhelming number of more significant and substantial contacts with the State of Wisconsin. That this is distinctly out of step with the thinking of this court has been clearly indicated by Justice White in *Worldwide Volkswagen* (supra) wherein Justice White stated:

> The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the 14th Amendment. 100 S.Ct. 565.

The present decision of the Minnesota Supreme Court plainly and simply indicates that they will hold all insurers who do business in the State of Minnesota to their blanket public policy, even in disputes involving non-residents traveling outside of the State of Minnesota and carrying insurance policies issued, underwritten and paid for outside of the State of Minnesota, covering vehicles garaged outside of the State of Minnesota. Such an assertion completely erases the rule of comity and violates this court's interpretation of the full faith and credit and due process provisions of the Constitution.

For these reasons, petitioner requests that this Court reverse the decision of the Minnesota Supreme Court and direct that the action of the respondent seeking to stack the uninsured motorist benefits of a Wisconsin insurance policy be dismissed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-938

ALLSTATE INSURANCE COMPANY,
Petitioner,

vs.

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR THE RESPONDENT

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Minnesota Supreme Court is reported as Hague v. Allstate Insurance Co., 289 N.W.2d 43 (Minn. 1979).

QUESTIONS PRESENTED

The Respondent is dissatisfied with the form of the question presented by the Petitioner and suggests that the following is a more appropriate formulation.

I. Minnesota's laws and expressed public policy permit "stacking" of uninsured motorist coverage. Wisconsin's laws and public policy on this question are unclear. Is there present a true conflict of laws?

II. Is the United States Constitution violated when a state court looks to the law of the plaintiff's domicile in awarding benefits of an automobile insurance policy?

III. Does this case present an appropriate vehicle for exercise by the Supreme Court of its supervisory powers over the state courts' choice of law?

STATEMENT OF THE CASE

The parties presented to the Supreme Court an Agreed Statement of the Record which is set forth in Petitioner's Statement of the Case, and Respondent agrees with that portion of the Petititoner's Statement of the Case.

ARGUMENT

I. THIS CASE DOES NOT PRESENT THE COURT WITH A TRUE CONFLICT OF LAWS SINCE WISCONSIN'S LAWS AND PUBLIC POLICIES RELATING TO "STACKING" OF UNINSURED MOTORIST COVERAGE ARE UNCLEAR BUT MINNESOTA'S LAWS AND EXPRESSED PUBLIC POLICY PERMIT "STACKING".

The initial question in approaching conflict of laws problems is the determination whether a true conflict exists. There are two situations under which a true conflict will not be present. First, when the laws of the respective States are primarily the same for the factual circumstances presented. R. Leflar, *American Conflicts Law* 188 (3d ed. 1977). The second situation is when the governmental interests of one state in having its laws applied to the case greatly outweigh the respective governmental interests of the other state involved. *Id.* at 187.

Minnesota has expressed a strong governmental interest in permitting recovery of the maximum amount possible by permitting stacking of automobile insurance policies. *Van Tassel v. Horace Mann Ins. Co.*, 296 Minn. 181, 207 N.W.2d 348 (1973). In Wisconsin, the status of the right to stack automobile insurance policies is unclear. In this case the majority concluded that stacking would be impermissible under the laws of Wisconsin. *Hague v. Allstate Ins. Co.*, 289 N.W.2d 43, 48 (Minn. 1979). Their decision was based upon the case of *Nelson v. Employers Mut. Cas. Co.*, 63 Wis.2d 558, 217 N.W.2d 670 (1974). As stated by the Minnesota Supreme Court in Hague:

> *The question of whether Wisconsin law permits excess insurance clauses and thus limits stacking is difficult be-*

> *cause the Wisconsin Supreme Court has never ruled on the same issue under the statute in force at the time this policy was written.* Neither the briefs nor arguments of counsel, however, persuade us that the Legislature or Supreme Court of Wisconsin would overrule the decision in *Nelson v. Employers Mutual Cas. Co., supra,* in which the court upheld the validity of such clauses. Thus, we find that Wisconsin law in effect at the time of the writing of the policy allowed "excess insurance" clauses and that stacking would not be permitted if Wisconsin law were to apply. [emphasis added]

289 N.W.2d at 48. The Respondent contends that the law of Wisconsin in respect to stacking insurance coverage is unclear since the Wisconsin Supreme Court in *Nelson* construed a version of Wisconsin law that was not in effect at the time the insurance policy was issued to Hague in 1974. In *Nelson* the Court construed the 1967 version of Section 204.30(5)(a) of the Wisconsin Statutes which was amended in 1973 through the addition of the following sentence:

> The uninsured motorist bodily injury coverage limits provided in an automobile liability or motor vehicle liability policy of insurance as required in this subsection shall not be reduced by the terms thereof to provide the insured with less protection than would be afforded him if he were injured by a motorist insured under an automobile liability or motor vehicle liability policy of insurance containing limits provided in this subsection.

Wis. Stat. §204.30(5)(a) (1973). Although *Nelson* did not involve the amended Statute, the Wisconsin Supreme Court in *dicta* expressed no opinion as to whether stacking is per-

missible under this version of the Statute. 63 Wis.2d at 569, 217 N.W.2d at 675. In addition the Court in *Nelson* recognized the fact that the national trend is to allow stacking of auto insurance policies. *Id.* at 563, 217 N.W.2d at 673.

In conclusion, if Wisconsin law had been applied to this action (whether by a Minnesota court or by a court in Wisconsin), it is not clear whether stacking of insurance benefits would have been permitted. It is clear that no expressed intent of the Wisconsin Legislature and no discernible interest of the state of Wisconsin is opposed to stacking in the circumstances of the present case. In the absence of a clear conflict the respondent submits that it would be inappropriate for this court to address the constitutional issues raised by the petitioner.

II. THE APPLICATION OF THE LAW OF THE PLAINTIFF'S DOMICILE DOES NOT VIOLATE THE UNITED STATES CONSTITUTION IN THE CIRCUMSTANCES OF THIS CASE.

This Court hitherto has declined to develop a detailed set of constitutionally derived standards which States must follow in resolving conflict of law issues involving insurance coverage. Instead, this Court has resolved the issue on a case-by-case basis under which each factual situation is examined in light of the Due Process and Full Faith and Credit Clauses of the Constitution.

A. THE PRESENT CASE COMES WITHIN THE PERMISSIBLE AMBIT OF STATE CHOICE OF LAW.

In *Clay v. Sun Insurance Office, Ltd.*, 377 U.S. 179 (1964), this Court recognized that insurance contracts involving multi-state coverage, upon which suit may be brought in one of several states, may be subject to the laws of any one of the states involved. Justice Douglas speaking for the Court and quoting from Justice Black's previous dissenting opinion in *Clay I stated:*

> Insurance companies, like other contractors, do not confine their contractual activities and obligations within the state boundaries. They sell to customers who are promised protection in states far away from the place where the contract is made. In this very case the policy was sold to the insured with knowledge that he could take his property anywhere in the world he saw fit without losing the protection of his insurance . . . Particularly since the company was licensed to do business in

> the forum state it must have known it might be sued there . . . 363 U.S. at 221, 80 S.Ct. at 1230.

Id. at 182.

The respondent contends that the factors that justified the application of the forum state's law in *Clay* are present in the case at bar and therefore support an affirmation of the Minnesota Supreme Court's decision. In both cases the insurer was licensed to and did conduct business in the forum state. Each insurance policy provided coverage for losses occurring throughout the United States. In the case at bar the Petitioner issued the policy with the expectation that the insured would drive beyond the territorial boundaries of the state in which the policy was issued. Therefore, in both cases the insurer knew that the circumstances were such that a suit based upon the policy might be brought in a state other than the place of contracting, and liability determined in accordance with that State's law.

An additional factor in support of the constitutionality of the choice of Minnesota law is the lack of reliance upon the application of Wisconsin law by the petitioner. Allstate did not attempt to restrict the interpretation of its coverage under the policy to the laws of the state of the policy's execution. In fact insurers do not attach great significance to the geographical boundaries in which their insureds will travel in setting automobile insurance premium rates. *See* Morris, *Enterprise Liability and the Actuarial Process - The Insignificance of Foresight*, 70 Yale L. J. 544 (1961); Peck, *Comparative Negligence in Automobile Liability Insurance*, 58 Mich. L. Rev. 689 (1960). Thus the petitioner cannot claim that the choice of Minnesota law contravenes its justified expectations or reliance upon Wisconsin law.

The petitioner contends that *Clay* is distinguishable since the loss did not occur in the forum state. This factor does not prevent the application of *Clay* to the case at bar since this Court has upheld the application of the forum state's law when the loss occurred in another state. *See Alaska Packers Assoc. v. Industrial Accident Comm'n*, 294 U.S. 532 (1935) (Application of the Workers' Compensation law of the forum state did not violate the Due Process and Full Faith and Credit Clauses of the Constitution when the worker, a non-resident, was employed in the forum state to work in another state where the injury was sustained). By stressing the fact that the accident did not occur in Minnesota, the petitioner implicitly argues that it will be denied Due Process unless the laws of the situs of the tort are applied. An expectation that Wisconsin laws should apply since it was the situs of the tort is not justified. Any expectations regarding which state's laws should apply must necessarily be formed at the time of the issuance of the policy. At that point in time, none of the circumstances of a loss is known and thus it is impossible for one to form any expectations. The only expectation that could arise at that point is that a loss could occur anywhere under circumstances that would justify application of the forum state's law. Likewise, justified expectations could not have arisen at the moment of the accident merely by looking to the situs of the tort as not all the relevant facts were then known.

Based upon a weighing of factors known, it is contended that Allstate was not denied its rights under the Constitution since the case involved an ambulatory contract, issued without any expectation as to the forum in which suit might be brought or the laws to which the policy would be subject. Thus, an insurer who by conducting business in the forum

state has enjoyed the benefit and protection of its laws and thus should not be permitted to object to the application of the forum state's law in a suit against the insurer. This last point was discussed by Justice Frankfurter in his concurring opinion in *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66, 74 (1954). Of importance to Justice Frankfurter was the fact that a state has the privilege of excluding a corporation from conducting business in the state. Therefore it follows that if the corporation is allowed to engage in business in the state it also becomes subject to regulation and its dealings must conform to the public policy of the host state.

Another area in which this Court has been faced with a Constitutional challenge to a forum state's choice of its law concerns Workers' Compensation. *See e.g., Pacific Employers Ins. Co. v. Indus. Accident Comm'n*, 306 U.S. 493 (1939) (Full Faith and Credit Clause did not preclude California from applying its own Workers' Compensation Act where a Massachusetts employee of a Massachusetts employer suffered an injury in California). The Court's opinion in *Pacific Employers* was discussed at length in the subsequent case of *Carroll v. Lanza*, 349 U.S. 408 (1955). Like *Pacific Employers*, *Carroll* dealt with a choice of law issue between two states' Workers' Compensation laws. In *Carroll v. Lanza*, the Supreme Court held that Arkansas, the place of injury, could, within the limits of the Full Faith and Credit Clause, allow recovery under its common law in spite of the fact that the Workers' Compensation Statute of Missouri, the State of employment, was designed to be the exclusive remedy. In discussing *Pacific Employers* the Court reasoned that, ". . . the Full Faith and Credit Clause does not require a state to substitute for its own statute, applicable to persons and events within it, the statute of another state reflecting a conflicting

and opposed policy." *Id.* at 412. *See Alaska Packers Ass'n v. Indus. Accident Comm'n*, 294 U.S. 532, 543 (1935).

The Workers' Compensation cases teach us that when the forum state has an interest in the litigation it is not compelled to apply the law of a sister state simply because the sister state has an interest in the matter being litigated and its law would be of controlling force if the matter were litigated there. In addition, when a litigant's challenge to the choice of a state's law is founded upon the Full Faith and Credit Clause that party assumes the burden of showing that the conflicting interests of the sister state are superior to those of the forum state. *Alaska Packers Ass'n v. Indus. Accident Comm'n*, 294 U.S. 532, 547 (1935). Allstate has made no such showing.

B. MINNESOTA HAD AN IMPORTANT, AND CONSTITUTIONALLY PROTECTED INTEREST, IN THE APPLICATION OF ITS LAW IN THE PRESENT CASE.

In this case, Minnesota has a significant relationship to and interest in the issues and parties in this litigation: (1) this case concerns benefits payable to a widow, and the widow was domiciled in Minnesota at the time of suit; (2) the decedent, Ralph Hague, had worked for fifteen years in Minsota and had almost daily driven back and forth across the Minnesota-Wisconsin border to his employment in Minnesota; (3) Allstate does substantial business in Minnesota, and is clearly subject to the state's insurance regulations;* (4) the plaintiff is the personal representative of the decedent pur-

* According to the Minnesota Insurance Division, Allstate in 1978 collected 4.74% of all private passenger vehicle premiums. Allstate is the fourth largest automobile insurer in Minnesota.

suant to appointment of the Minnesota probate court, and the claim subject of this suit is the principal asset of the estate. *See Travelers Ins. Co. v. Davis,* 490 F.2d 536, 543 (3d Cir. 1974).

Petitioner's brief cites the cases of *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.,* 292 U.S. 143 (1934), and *Home Insurance Co. v. Dick,* 281 U.S. 397 (1930), in support of its contention that the choice of Minnesota law in the case at bar violated the Due Process and Full Faith and Credit Clauses of the Constitution. *Delta & Pine Land* has been questioned in previous opinions by this Court as to whether if brought before the Court to day it would result in the same decision. *Clay v. Sun Ins. Office Ltd.,* 363 U.S. 207, 220 (1960) (Justice Black's dissenting opinion in the first case); *Carroll v. Lanza,* 349 U.S. 408 (1955); *see Watson v. Employer Liab. Assurance Corp.,* 348 U.S. 66 (1954). On the other hand, in *Dick,* Texas had no discernible interest, a fact that is emphasized in Justice Brandeis' observation, 281 U.S. at 410, that if the real defendant in the case (the Mexican insurance company) had been doing business in Texas the case might have come out the other way.

Moreover the facts of *Dick* are distinguishable from the facts of the case at bar. In *Dick,* coverage under the insurance contract was limited to certain Mexican waters. In the case at bar the insurance contract covered the decedent or his vehicle throughout the United States, its territories and possessions or Canada. The importance of this difference was considered in *Watson v. Employers Liability Assurance Corp.,* 348 U.S. 66 (1954). In *Watson,* this Court recognized that under insurance contracts providing coverage for multi-state transactions each state involved may regulate the transaction in the manner which protects the interests of its people, including the choice of its own laws. *Id.* at 71-72. When compared to

Dick and *Watson*, the contract involved in the present action most closely resembles the contract construed in *Watson*. The contract did not insure the decedent while traveling only in Wisconsin. Like *Watson* it offered him coverage throughout the country and did not attempt to confine its coverage to Wisconsin's roads.

The second distinguishing factor between *Dick* and the case at bar is the commercial relationship between Allstate and the forum state. In *Dick*, the insurer "never was in Texas." 281 U.S. at 410. (Similarly in *Shaffer v. Heitner*, 433 U.S. 186, 213 (1977), plaintiff neither alleged nor claimed that defendants "ever set foot in Delaware"). In contrast, in the case at bar, Allstate maintains a commercial relationship with the forum state and its citizens. In fact, in this case Allstate concedes that Minnesota has properly obtained *in personam* jurisdiction over it. Brief of Petitioner at 6. Allstate is licensed to do business in Minnesota and maintains an office with agents in the state. Based upon this court's own language in *Dick* it is evident that *Dick* was not intended to serve as a precedent in cases where an insurer is licensed to and does conduct business in the forum state. See 281 U.S. at 410.

In support of its position, Allstate cites *John Hancock Life Insurance Co. v. Yates*, 299 U.S. 178 (1936). That case was decided under the Full Faith and Credit Clause before the Supreme Court embarked on the course of permitting the state courts to develop their own choice of law analysis, subject only to Due Process constraints. (See Part III of this Brief.)

C. THE RECENT JURISDICTION CASES IN THIS COURT SUPPORT APPLICATION OF MINNESOTA LAW IN THIS CASE.

Recent case law concerning the Due Process Clause has been formulated in the line of cases concerning the exercise of jurisdiction by states over non-resident defendants. While the issues of the constitutional limitations imposed upon states in respect to judicial jurisdiction and choice of law appear to be treated differently, this Court in several cases has recognized that since both issues deal with similar considerations it might be appropriate to subject them to a similar analytical framework. *See Shaffer v. Heitner*, 433 U.S. 186 (1977); see generally Silberman, *Shaffer v. Heitner: The End of an Era*, 53 N.Y.U.L. Rev. 33, 79-90 (1978).

While the trend appears to be that objections to a state's choice of law will be examined against this Court's recently enunciated jurisdictional standards, this Court has repeatedly said that a broader range of contacts and interests will sustain a state's choice of law. In *Hanson v. Denckla*, 357 U.S. 235 (1958), this Court held that Florida could not exercise jurisdiction over the trustee or the trust which had been established in Delaware since the Delaware Trust Company, apart from this trust, maintained no contacts with Florida. Even though the state could not exercise jurisdiction the court stated that there might well be a sufficient basis for the choice of the forum state's law. *Id.* at 253.

This dichotomy between jurisdiction and conflict of law recently was discussed in *Shaffer v. Heitner*, where the defendants' only contact with the forum state was the fact that the forum state deemed itself the situs of the shares of stock. In support of the exercise of jurisdiction, it was argued that

the forum state had a compelling interest in the case since the corporation was incorporated under its laws and the defendants as directors derived benefits from those laws; accordingly it would be reasonable to require the director to respond to a lawsuit brought in the forum state. While these factors were an insufficient basis under which the forum state could exercise jurisdiction they were deemed sufficient to permit the application of the laws of the forum state:

> [Plaintiff] notes that Delaware law provides substantial benefits to corporate officers and directors, and that these benefits were at least in part the incentive for appellants to assume their positions. It is, he says, "only fair and just" to require appellants in return for these benefits, to respond in the State of Delaware when they are accused of misusing their powers. . . .
>
> But like Heitner's first argument, this line of reasoning establishes only that it is appropriate for Delaware law to govern the obligations of appellants to Greyhound and its stockholders.

Id. at 215-16; *accord, Kulko v. Superior Court,* 436 U.S. 84, 98 (1978).

This analysis resembles the theory developed by Professor Weintraub. *See* Weintraub, *Due Process and Full Faith and Credit Limitations on a State's Choice of Law,* 44 Iowa L. Rev. 449 (1959). Professor Weintraub, in examining the contacts of the defendant with the state whose law is to be applied, looks to the justifiable expectations of the party, i.e., whether the application of the forum state's law, would "inject an element of unfair surprise." *Id.* at 457. Thus, under Weintraub's approach if a party has in the past sought the benefits of the laws of a state that party cannot object to a subsequent

application of that state's law against it on the basis of an alleged denial of due process. In this situation the minimum contacts with the state arise out of the prior reliance upon the state's laws. Therefore, the choice of Minnesota law in this case was constitutionally permissible since the petitioner conducts business in the forum state and issued the policy with the understanding that it might be subject to suit in Minnesota and have its liability determined under the laws of Minnesota. The result in this case did not amount to an "unfair surprise" to the petitioner, since its expectations must have included the belief that the policies might be stacked.

The suggestion has been made that this Court should impose the same standard in reviewing challenges to a state's choice of law as to a state's assertion of judicial jurisdiction. In his dissenting opinion in *Shaffer* Justice Brennan wrote:

> In either case an important linchpin is the extent of contacts between the controversy, the parties, and the forum state. While constitutional limitations on the choice of law are by no means settled . . . important considerations certainly include the expectancies of the parties and the fairness of governing the defendants' acts and behavior by rules of conduct created by a given jurisdiction. (citations omitted).

Id. at 225.

The standards referred to by Justice Brennan were established by the Court in the case of *International Shoe Co. v. Washington,* 326 U.S. 310 (1945). The Court in *International Shoe,* in determining whether due process had been satisfied,

looked to "the quality and nature of the activity in relation to the fair and orderly administration of the law . . ." *Id.* at 319. This was construed by the Court to mean that the exercise of jurisdiction is consistent with due process when the defendant has certain minimum contacts with the forum state so that maintenance of the suit does not violate the "traditional notions of fair play and substantial justice." *Milliken v. Meyer,* 311 U.S. 457, 463 (1940). In finding the exercise of jurisdiction over the defendant consistent with the Due Process Clause the Court held that when a party chooses to engage in commercial activities and enjoy the benefit of the protection of the state's laws, a companion obligation is incurred, namely the duty to respond to a suit in that state. *International Shoe,* 326 U.S. at 319.

This doctrine was reaffirmed in *World-Wide Volkswagen Corp. v. Woodson,* 100 S. Ct. 599 (1980). In *Woodson,* plaintiff named four defendants—the manufacturer (Audi), the importer (Volkswagen of North America), the regional distributor (World-Wide), and the local dealer (Seaway). This Court held that the latter two could not be subjected to suit in Oklahoma. Allstate in the present case, however, is not like the local dealer in Massena, N.Y., but rather, like Volkswagen of North America. It does extensive business in the forum state: as its very name implies, Allstate trades in substantial part on its presence throughout the United States and through the Sears, Roebuck catalog and retail stores, it avails itself of the benefits of the laws of all fifty states, including Minnesota. Based upon the nature of the petitioner's product it is evident that the policies were issued with the expectation that suit might be brought upon them in any state under circumstances which would warrant application of the forum state's law.

In *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), California jurisdiction (and by clear implication application of California law) were held valid against an insurer who had fewer contacts with the forum state than does the petitioner in the case at bar. In *McGee*, the evidence disclosed that the insurer did not maintain any office or agents in the forum state and had never solicited or conducted any business in the forum state except for the one policy involved in the litigation. The Court held that the exercise of jurisdiction did not amount to a denial of due process since the policy had been delivered in the forum state to a resident who paid the insurance premiums in the forum state. If these contacts of the claimant were sufficient in *McGee* to satisfy the traditional notions of justice and fair play the contacts in the case at bar should be deemed sufficient to warrant affirmation of the Minnesota Supreme Court's decision. Here the Petitioner's expectation of suit in Minnesota was greater than the expectation of the insurer in *McGee* to a suit in California. Therefore when analyzed from this perspective Allstate by engaging in commercial activity and availing itself of the protection of the forum state's law became subject to suit in the forum state and the application of its laws. Thus Allstate should not now be permitted to claim that due process was denied to it by the Minnesota Supreme Court.

III. THIS COURT SHOULD BE RELUCTANT TO INTERVENE IN THE DEVELOPMENT OF CHOICE OF LAW DOCTRINES BY THE STATE COURTS.

This Court has long since rejected the notion that the Constitution requires the creation of a federal choice of law doctrine. After a brief period of attempt to control state choice of law rules (1918-1932), this Court has exercised only a minimum of oversight on the decisions of state courts to choose among the laws of the several states to be applied to any given case, once it is clear that the court in question has jurisdiction over the subject matter and the parties to the litigation. Indeed, the touchstone of the Supreme Court's decisions in the choice of law cases is that the due process clause poses a fairness limitation on the power of a state to apply its own law to parties with whose disputes it has virtually no connection, and in the outcome of which it has virtually no interest. The present case does not come within that category.

A. THERE IS NO ACCEPTABLE SOURCE FOR A SUPREME COURT CHOICE OF LAW DOCTRINE.

The decision in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) set the direction for modern conceptions of federalism, and placed limits on lawmaking by federal courts, including this Court. The import of the *Erie* doctrine in the present context is that conflict of laws rules, no less than rules concerning commercial law, statutes of limitation, or tort liability, are committed to the states, at least in the absence of federal statute. "[T]he prohibition declared in *Erie* . . . against . . . independent determinations [of the better rule of law] by the

federal courts, extends to the field of conflict of laws." *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496 (1941).

Of course, all adjudication in the United States is subject to the Constitution; however, as an independent source of law for deciding conflict of laws issues, neither Article III nor Article IV offers much guidance. The due process clause sets the outer limits, but does not provide a source for choosing among rules of jurisdictions which fall within those limits. Thus if this Court were to require a state court to, say, reject the views of Leflar or Currie in favor of those of Reese or Cavers,[1] it would be, in effect, drawing on the Constitution for a source that is not there.

Klaxon itself involved a federal court hearing an action based on diversity of citizenship. But if this Court was reluctant to permit the lower federal courts to exercise supervision over the choice of law process, it ought to be still more reluctant to exercise such supervision itself in its function of reviewing the work of the state courts. In other words, choice of law has not been—at least since 1938—a federal question. If the Court in the present case were to prescribe a particular choice of law to the Minnesota courts, it would open the door to the filing of hundreds of petitions for certiorari, each depending on some variation in contacts, expectations, preferences, or interests.

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[1] *Compare*, Leflar, *Choice-Influencing Considerations in Conflicts of Law*, 41 N.Y.U.L. Rev. 267 (1966) *and* Currie, *Notes on Methods and Objectives in the Conflict of Laws*, 1959 Duke L.J. 171, reprinted in B. Currie, *Selected Essays on the Conflict of Laws* (1963), *with* Reese, *Choice of Laws: Rules or Approach*, 57 Corn. L. Rev. 315 (1972) *and* D. Cavers, *The Choice-of-Law Process* (1965). *See also* R. Weintraub, *Commentary on the Conflict of Laws* 6-11 (2d ed. 1980).

B. THIS COURT SHOULD NOT FRUSTRATE EXPERIMENTATION IN CONFLICT OF LAWS THINKING AT THIS TIME.

A generation ago, Professor Paul A. Freund, in reviewing the work of Chief Justice Stone in the field of conflict of laws, wrote:

> [P]roblems in choice of law have not lent themselves to satisfactory solution as constitutional questions, and . . . in their nature they cannot be expected to . . . . If the task of Conflict of Laws is to understand, harmonize, and weigh competing interests in multistate events, and if the desideratum of uniformity will be approached most satisfactorily by evolving rules that deliberately seek these objectives, then we seem to be hardly ready for a set of precepts imposed in the process of Supreme Court decision as fixed canons of constitutional law.

Freund, *Chief Justice Stone & the Conflict of Laws*, 59 Harv. L. Rev. 1210, 1235-36 (1946).

A half generation ago, Judge Irving Kaufman, faced with the argument that the Constitution required application of the law of the place of an accident to the award of damages by the court of another forum, wrote:

> The field of conflict of laws, the most underdeveloped in our jurisprudence from a practical standpoint, is just now breaking loose from the ritualistic thinking of the last century. Recent opinions of the Supreme Court and the great wave of academic writing reinforce this trend toward flexible and articulate selection of the laws governing multistate transactions. The development will be stillborn if we impose inflexible constitutional strictures

> in the name of national unity, restrictions which could not be repaired by state or federal legislation.

Pearson v. Northeast Airlines, Inc., 309 F.2d 553, 563 (2d Cir. 1962) (en banc).

In the interval between Judge Kaufman's opinion and the present, the development that he predicted has gone on at a rapid pace.[2] If the Court were now to intervene in that development, it would either end the experimentation and signal the beginning of a new "Ice Age of conflict of laws jurisprudence," (See *Pearson*, 309 F.2d at 557), or it would invite each losing party in an interstate transport accident, or medical malpractice, or products liability litigation to come to this Court alleging violation of its due process rights.

C. THIS COURT HAS CONSISTENTLY REVERSED STATE AND LOWER FEDERAL COURTS WHICH SOUGHT TO IMPOSE CHOICE OF LAW RESTRAINTS IN RELIANCE ON THE CONSTITUTION.

In *New York Life Insurance Co. v. Dodge*, 246 U.S. 357 (1918), the U.S. Supreme Court reversed the Missouri Supreme Court which had applied Missouri law, and required the application of New York law to an insurance claim in which both states might be said to have been interested. That

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[2] *See e.g., Babcock v. Jackson*, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); *Dym v. Gordon*, 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965); *Macey v. Rozbicki*, 18 N.Y.2d 289, 221 N.E. 380, 274 N.Y.S.2d 591 (1966); *Tooker v. Lopez*, 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969) *Neumeier v. Kuehner*, 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972); *Towley v. King Arthur Rings, Inc.*, 40 N.Y.2d 129, 351 N.E.2d 728, 386 N.Y.S.2d 80 (1976). Justice Cardozo's observation, made well before the "conflicts explosion" of the 1960's has merely been borne out. Conflict of laws remains "one of the most baffling subjects of legal science." B. Cardozo, *The Paradoxes of Legal Science* 67 (1928).

effort was quickly rescinded, in *Mutual Life Insurance Co. of New York v. Liebing*, 259 U.S. 209 (1922).

In *Bradford Electric Light Co., Inc. v. Clapper*, 286 U.S. 145 (1932), the U.S. Supreme Court reversed the First Circuit Court of Appeals hearing a case brought in New Hampshire, and required that court to apply Vermont law to a claim by a Vermont employee against his Vermont employer arising out of a New Hampshire accident—again an action in which both states could be said to have an interest. That effort was also quickly rescinded, in *Pacific Employers Insurance Co. v. Industrial Accident Comm'n*, 306 U.S. 493 (1939).

In *Watson v. Employers Liability Assurance Corp., Ltd.*, 348 U.S. 66 (1954) both the federal district court in Louisiana and the Court of Appeals for the Fifth Circuit thought they were bound by the Constitution to forbid Louisiana from applying its law to an interstate products liability case. This court reversed.

In *Carroll v. Lanza*, 349 U.S. 408 (1955), the Court of Appeals for the Fifth Circuit thought it was bound by the Constitution to apply Missouri law to a claim by a Missouri employee arising out of an accident in Arkansas. Again this Court reversed.

In *Clay v. Sun Insurance Office, Ltd.*, 377 U.S. 129 (1964), the Court of Appeals for the Fifth Circuit, even after being directed by this Court to seek the views of the Supreme Court of Florida as to which law it would have applied, 363 U.S. 207 (1960), thought it was bound by the Constitution to apply Illinois law to an insurance claim by a Florida resident based on an Illinois contract. Again, this Court reversed.

Finally, in *Nevada v. Hall*, 440 U.S. 410 (1979), (which seems to have been brought to this Court for reasons other

than the choice of law issue), the California Court of Appeal applied California law to an accident claim against the state of Nevada arising out of the operation of one of the state's vehicles in California. This Court affirmed.

In sum, (apart from two short-lived excursions) whenever state or lower federal courts thought they were obligated to apply a particular state's law, the Supreme Court reversed; whenever an interested state court exercised discretion in choosing the applicable law, this Court affirmed. Nothing in the present case justifies a departure from the attitude of the Supreme Court towards this aspect of our federal system.[3]

D. THE MANY VARIATIONS IN FACT PATTERNS DO NOT LEND THEMSELVES TO GENERALLY APPLICABLE PRINCIPLES OR GUIDELINES.

The suggestion is made in the preceding sections that this Court has been wise when it permitted freedom of choice of law, and has regretted it when it has imposed conformity on state or lower federal courts as to choice of law. A brief summary of some certiorari petitions filed over the past few years demonstrates the wisdom of this Court's past reluctance to intervene in developments in this area.

In *Bernhard v. Harrah's Club*, 16 Cal. 3d. 313, 546 P.2d 719, 128 Cal. Rptr. 215 (en banc), *cert. denied*, 429 U.S. 859 (1976), a defendant club owner in Nevada sought review in this Court from a decision of the California Supreme Court permitting recovery against him for an automobile accident

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[3] The only cases in which application of forum law has been barred [*Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934) and *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930)] have been those *rarae aves* where the relations among the parties, the forum, and the litigation were "thought to be too slight and too casual," or just plain "wholly lacking." *Clay v. Sun Insurance Office, Ltd.*, 377 U.S. at 182.

in California. His argument was that he had sold liquor in Nevada in circumstances where no liability would accrue to him under Nevada law. Under California law, one who sells liquor to intoxicated persons is liable to third parties for damages caused to them by the intoxicated persons. The liquor club in question was near the state border, and the owner had advertised in California, and made special efforts to attract California residents. The California Supreme Court upheld both jurisdiction over the club and application of California law. This Court denied review.

In *Blamey v. Brown*, 270 N.W.2d 884 (Minn. 1978), *cert. denied*, 48 U.S.L.W. 3535 (Feb. 19, 1980), involving a Wisconsin liquor seller and a Minnesota accident, the facts were nearly the same as in *Bernhard*, except that the Wisconsin seller had made no effort, as the court found, to advertise in Minnesota or attract Minnesota residents. Again this Court denied review.

In *Schwartz v. Consolidated Freightways Corp. of Delaware*, 306 Minn. 564, 237 N.W.2d 385 (1975), *cert. denied sub. nom., Spector Freight System, Inc., of Illinois v. Schwartz*, 425 U.S. 959 (1976), plaintiff was the driver of a truck involved in a three-truck accident in Indiana. All three trucks belonged to companies that did business in Minnesota, but only plaintiff's company was a Minnesota corporation and only plaintiff himself was a Minnesota resident. In an action brought in Minnesota, the Supreme Court of that state applied Minnesota's comparative negligence rule in preference to the absolute bar for contributory negligence that prevailed in Indiana. The defendants sought review in this Court—again on full faith and credit and due process grounds. Hereto this Court denied review.

As these cases illustrate, choice of law in accident cases is not an area where a few well-chosen rules, or even guide-

lines, will suffice. Reversing the state court in the present case would not shed light on the others; and if certiorari had been granted in any of the others, the state (and lower federal) courts could not have drawn comfort from the Supreme Court's decision—at least absent some draconian return to the Ice Age of the First Restatement.[4] Each case has some facts of general application, and some unique ones. For instance in the present case, the decedent lived in one state, worked in the other, and his widow (plaintiff below) changed her domicile after the accident. In *Schwartz* both the plaintiff and the company that owned his truck were from the forum state, and all the trucks were owned by interstate carriers. In both *Bernhard,* and *Blamey,* the dram shop cases, the sellers were located near the state border, but one did, the other did not, engage in interstate solicitation. It is hard to see how any of these details rise to the dignity of a constitutional principle, to be enunciated by the Supreme Court with value beyond the case at hand.

IV. THE SUPREME COURT'S SUPERVISION OF THE EXERCISE OF JURISDICTION OVER ABSENT DEFENDANTS ADEQUATELY PROTECTS THE APPROPRIATE CONCERNS OF FAIRNESS IN A FEDERAL SYSTEM.

In the choice of law cases as well as the jurisdiction cases the major premise of all recent decisions has been that exercises of state court power must "not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945) [quoting *Milliken*

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[4] *See* American Law Institute, *Restatement of Conflict of Laws* (1934); *see also* J. H. Beale, *A Treatise on the Conflict of Laws,* (1935).

v. Meyer, 311 U.S. 457, 463 (1940)]. The fairness subsumed within those notions requires that a defendant be given adequate notice of suit, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); that he not be forced to bear the burden of litigating in a forum with which he lacks "minimum contacts", *World-Wide Volkswagen Corp. v. Woodson*, 100 S.Ct. 559 (1980); that he not suffer the consequences of having an unexpected law applied by a forum "wholly lacking" in contacts with the parties or interests in the outcome of the litigation, *Home Insurance Co. v. Dick;* and that he not be "haled before a . . . court" simply on the basis of owning stock in a corporation organized in the state of the forum, *Shaffer v. Heitner*, 433 U.S. 186 (1977), or on the basis of sending his child into the forum state, *Kulko v. Superior Court*, 435 U.S. 84 (1978). But none of these probems is present in this case.

A. RECENT CORRECTIONS OF JURISDICTIONAL ABERRATIONS HAVE SOLVED THE PROBLEM OF OVERREACHING BY STATE COURTS.

It is no accident that the leading—and almost the only—case in which this Court has struck down the application by a state court of its own law to an interstate transaction, *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930) is a case that could no longer be brought today. Texas had no real jurisdictional basis for hearing the action; indeed the issuer of the policy could not even be served in Texas, and the respondent was the garnishee, Home Insurance, whose obligation to reinsure was used as the hook to bring the suit before the Texas courts. *Home Insurance Co. v. Dick*, in other words, was an application (or even extension) of *Harris v. Balk*, 198 U.S. 215 (1905), and a precursor of *Seider v. Roth*, 17 N.Y.2d 111,

216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). After *Shaffer v. Heitner,* 433 U.S. 186 (1977), and *Rush v. Savchuk,* 100 S.Ct. 571 (1980), the situation in *Home Insurance* could not again arise.

In contrast, in *Watson v. Employers Liability Assurance Corp.,* as in the present case, there was no problem about jurisdiction over the defendant insurance company, which had qualified to do business and was doing business in the state.[5]

Again it is no accident that the most criticized choice of law cases in recent years—notably *Rosenthal v. Warren,* 475 F.2d 438 (2d Cir.) *cert. denied,* 414 U.S. 856 (1973), and *O'Connor v. Lee-Hy Paving Corp.,* 579 F.2d 194 (2d Cir.) *cert. denied,* 439 U.S. 1034 (1978), were also cases in which judicial jurisdiction was acquired in ways this Court has now disapproved, by "attachment" of insurance policies issued to out-of-state defendants by companies doing business in the state of the forum. As this Court noted in *Rush v. Savchuk,* 100 S.Ct. at 577, "[t]he legal fiction that assigns a situs to a debt . . . wherever the debtor is found" is not sufficient to establish jurisdiction over the person to whom the "debt" is owed; the plaintiff's residence cannot make up for the missing element connecting the defendant to the forum. But where both the defendant and the plaintiff are fairly before the court, the likelihood of overreaching by a state court is very much diminished. This is particularly true when the defendant is a nationwide insurance company, which expects to and derives custom from the fact that it is represented and handles claims in all fifty states. [Compare *World-Wide Volkswagen Corp. v. Woodson,* 100 S.Ct. 559 at 567 (majority opinion); at 569 (Marshall, J. dissenting); at 571 (Blackmun, J. dissenting)].

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[5] See p. 10 and accompanying footnote for statement of Allstate's operations in Minnesota.

B. APPLICATION OF A STATE'S LAW IN SUITS AGAINST INSURANCE COMPANIES IS AN IMPORTANT, FAIR, AND RATIONAL EXERCISE OF THE CHOICE OF LAW FUNCTION.

In *Minichiello v. Rosenberg*, 410 F.2d 106, (2d Cir.) *cert. denied*, 396 U.S. 844 (1969), the Court of Appeals for the Second Circuit sustained a *Seider v. Roth* action brought by an in-state resident claiming injuries from an out-of-state accident, on the grounds (1) that jurisdiction based on a garnishment of insurance policies was for all practical purposes like a direct action statute, citing *Watson v. Employers Liability Assurance Corp.*, and (2) that the Supreme Court would uphold direct action statutes either on the basis that the plaintiff was a resident of the forum state or that the injury had occurred in that state. The first conclusion of the Second Circuit has now been overturned, because a majority of this court was not prepared to treat a judge-made fiction as if it were the real thing. *Rush v. Savchuk.*

The other leg of the Second Circuit's reasoning, however, remains sound. It would be most unfortunate if the Court were now to cast doubt on the continuing validity of *Watson.* As Justice Black pointed out in *Watson* itself (348 U.S. at 72), the direct action statute was an important element in Louisiana's protection of its residents against injuries. Precisely because it may not be possible to obtain jurisdiction over the actual tortfeasor—Gillette in *Watson,* the uninsured motorist in the present case—the state has seen fit to impose obligations on insurance companies. This court should not, by prescribing choice of law rules derived from discarded emphasis on the *lex loci delicti,* frustrate the interests of states acting to protect their citizens from injury.

C. A COURT'S APPLICATION OF THE LAW OF ITS OWN STATE TO A CASE IN WHICH IT CLEARLY HAS JURISDICTION DOES NOT POSE THE THREAT TO FEDERALISM THAT CONCERNED THIS COURT IN *WORLD-WIDE VOLKSWAGEN* AND IN *SAVCHUK*.

In *World-Wide Volkswagen* this Court identified "two related, but distinguishable, functions" performed by the minimum contacts test in the jurisdictional cases. First, "[i]t protects the defendant against the burdens of litigating in a distant or inconvenient forum"; and second, "it acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." 100 S. Ct. at 564. While the fairness function stands out in relief against the background of the choice of law cases as well, the federalism function has a much different role to play. Far from acting as an affirmative limit on a state's choice of law through the full faith and credit clause, the federalism concerns derived from *Erie* and *Klaxon* serve to *encourage* the states to be experimental laboratories in doctrinal construction. [*Cf.* Brandeis, J. dissenting in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932)].[6]

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[6] The admonition of Mr. Justice Brandeis in that case deserves a quote in full:

> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious, or unreasonable. We have power to do this, because

As demonstrated above, this Court has squarely rejected the notion that the full faith and credit clause compels a forum state to give effect to the insurance recovery scheme of a sister state, even when to do so would contravene its own policies on recovery. *Compare Pacific Employers Ins. Co. v. Industrial Accident Comm'n,* 306 U.S. 493 (1939) *with Bradford Electric Light Co. v. Clapper,* 386 U.S. 145 (1932). The conclusion is that the exercise of jurisdictional power by one state over nonresidents may well offend the due process clause, but that application of forum law once the court validly has jurisdiction and expresses legitimate forum interests, offends neither federalism nor due process.

This Court's recent clarifications of the jurisdictional questions go a long way towards resolving the choice of law issue in the present case. The due process clause acts as a limitation on the power of states as coequal sovereigns, and also as a protective shield for defendants against unforeseeable and unreasonable exercises of state court power over their persons and their property.

But the due process clause is not a writ of error to the state courts, to correct them whenever they differ with this Court over which among several applicable laws is the better one to apply. A reversal in the present case runs the risk of converting the due process clause into just such a general writ of error. This Court should continue to use the due process clause only in harmony with its chief purpose, as a corrective over truly arbitrary governmental interference with private rights.

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the due process clause has been held by this Court applicable to matters of substantive law as well as matters of procedure. But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold.

CONCLUSION

In *Hanson v. Denckla*, 357 U.S. 235 (1958), *Shaffer v. Heitner*, 433 U.S. 186 (1977), *World-Wide Volkswagen Corp. v. Woodson*, 100 S. Ct. 559 (1980), and *Rush v. Savchuk*, 100 S. Ct. 571 (1980), this Court said (over the dissent in the last three cases of Justice Brennan) that a relationship sufficient to support the application of a state's laws might not be sufficient to support the jurisdiction of the state's courts. Critics, led by Justice Brennan, have wondered why this should be so. Some have compared the contacts analysis of jurisdiction to the interest analysis of choice of law; some have said that jurisdiction depends only on the defendant, whereas choice of law may derive support from the relationship of the applicable law to both parties, the forum, and the cause of action. This court need not now write the last word on this question. It suffices to say that there is no present reason to depart from the distinction between choice of law and jurisdiction upheld by this Court in the past two decades, and to subject conflicts of law developments in the United States to control comparable to that exercised over jurisdiction of courts.

For the foregoing reasons respondent urges that this Court affirm the decision of the Minnesota Supreme Court.

Respectfully submitted,

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